

# IMMIGRATION REFORM AND CONTROL ACT OF 1983

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## HEARINGS BEFORE THE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

**H.R. 1510**

IMMIGRATION REFORM AND CONTROL ACT OF 1983

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MARCH 1, 2, 9, 10, 14, AND 16, 1983

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**Serial No. 2**

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Printed for the use of the Committee on the Judiciary







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10/17/84 Direct



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# IMMIGRATION REFORM AND CONTROL ACT OF 1983

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TUESDAY, MARCH 1, 1983

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES, AND INTERNATIONAL LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 9 a.m. in room 2237 of the Rayburn House Office Building, the Honorable Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Lungren, Fish, Hall, Crockett, and Smith.

Staff present: Arthur P. Endres, Jr., counsel; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. The subcommittee will come to order.

Without objection, the subcommittee will permit in this hearing room television broadcasters or still photography in accordance with committee rule V.

This is the first in a series of hearings we have scheduled for the next 3 weeks on H.R. 1510, the Immigration Reform and Control Act of 1983. This bill is the same as that reported out of the House Judiciary Committee in September last year, considered and not finally acted upon during the lameduck session of the 97th Congress.

It is a good bill with widespread support. It is a product of more than a decade of research, analysis, and hearings by the Congress, the three past administrations and the present, the Select Committee on Immigration and Refugee Policy, President Reagan's task force of Cabinet members, and numerous other independent studies.

It is no secret that the present immigration situation in our Nation is chaotic. Many describe it as out of control. Although we created a substantial hearing record in the last Congress on this particular legislation, the subcommittee feels it desirable that we refresh that record and examine further and consider any proposals which could strengthen H.R. 1510.

This bill contains the essential elements to bring order to our Nation's immigration system.

First, it imposes penalties on employers who knowingly hire undocumented aliens. The purpose of this provision is to eliminate the lure of jobs which is the main reason that aliens come to this country illegally.

The record is not clear how many jobs these undocumented aliens are taking away from Americans, but it is clear that there is some displacement, especially at the lower end of the economic scale. H.R. 1510 protects persons against discrimination in employment. However, the possibility of unintended discrimination troubles many organizations and groups. In these hearings, I hope we receive suggestions which could strengthen H.R. 1510 even further in its antidiscrimination provisions.

Second, the bill establishes a fair and expeditious system for adjudicating asylum claims. It is inexcusable to have a backlog of 140,000 asylum cases pending as we have today. This is a true indication that the present system is not working and that something must be done to correct it.

Third, H.R. 1510 streamlines some aspects of the H-2 program which allows foreign workers to enter our country for short durations of time to take specific jobs of a temporary nature. Every effort is made to provide jobs to American workers who want them before triggering the H-2 provisions.

The fourth element of the bill is a carefully controlled, case-by-case determination by which certain aliens, who have been in the United States illegally for various periods of time, can become legalized. The bill proposes a two-tiered legalization program granting permanent resident status or temporary resident status depending on how long the person has been in the country.

There are various other parts of significance in the bill which I would like to cover by asking unanimous consent at this point to insert into the record a summary of H.R. 1510.

Without objection, so ordered.

[The summary and a copy of H.R. 1510 follow:]

#### SUMMARY OF THE IMMIGRATION REFORM AND CONTROL ACT OF 1983 H.R. 1510

##### I. ILLEGAL IMMIGRATION

###### *A. Employer Sanctions*

Makes it unlawful for any employer knowingly to hire for employment or to recruit for a fee, after the date of enactment, any alien not authorized to work in the United States.

Requires employers of four employees or more to have all prospective employees show them, as a condition of hiring, either: (1) a U.S. passport, or (2) a U.S. birth certificate or social security card and a driver's license, or a state issued I.D. card, or an alien identification document.

Requires such employer, to attest in writing, under penalty of perjury, that he has seen the necessary documentation; requires the employee, to attest in writing under penalty of perjury, that he or she is authorized to work in the United States.

Any employer of four or more employees who does not meet the requirements for checking documents, signing the appropriate form, and retaining the appropriate form is liable to a civil fine of \$500 per employee hired.

States that within three years of enactment the President shall make such changes "as may be necessary" to make the system more secure.

States that the bill does not authorize the creation of national identification cards.

Establishes a graduated penalty structure for hiring unauthorized aliens—first offense: warning; second offense: \$1,000 civil fine per unauthorized alien hired; third offense: \$2,000 civil fine per unauthorized alien hired; fourth offense: \$3,000 criminal fine per unauthorized alien hired or one year in jail, or both. Also, Attorney General may seek an injunction to stop pattern or practice violators.

Requires an extensive outreach program to inform employers, employees, and the general public of this new law. Allows violations occurring during the first six (6) months after enactment to go unpublished.



Gives violators a right to a hearing before a Department of Justice Administrative Law Judge. (See page 2.)

Requires Civil Rights Commission to issue reports on possible discriminatory effect of this law.

Creates an affirmative defense for employers who have complied with the attestation requirements in good faith.

Creates a Department of Labor/Department of Justice task force to review complaints of discrimination.

Makes it a felony to use fraudulent documents in order to obtain employment.

#### *B. Increased Border and Other Enforcement; User Fees*

Creates criminal penalty for bringing an alien to the United States, knowing or in reckless disregard of the fact, that the alien had not received prior official authorization to enter.

States the sense of Congress that resources for border patrol and other immigration enforcement activities of the Immigration and Naturalization Service and other agencies should be increased.

Allows Attorney General to impose fees for the use by aliens of border and other immigration facilities and services in an amount commensurate with cost.

#### *C. Adjudication Procedures and Asylum*

Creates United States Immigration Board, an independent agency within the Department of Justice. Six member Board is appointed by the President with the advice and consent of the Senate, with members serving six year terms. It may meet en banc or in panels of three or more. It hears all appeals from decisions made by the Administrative Law Judges.

Chairman of Board appoints up to seventy Administrative Law Judges to hear all exclusion and deportation cases (including those involving asylum), challenges to fines, and all other matters heard by the present Board of Immigration Appeals. Some of the Administrative Law Judges are specially trained to hear asylum cases.

Decisions by Administrative Law Judges would be reversible by the Board if not supported by substantial evidence.

Judicial review in exclusion cases available in U.S. Circuit Courts.

Judicial review of asylum matters available in Circuit Court once a final order of deportation or exclusion has been entered.

Judicial review of non-asylum deportation cases available in Circuit Court of Appeals.

At asylum hearings, alien is entitled to an open hearing, representation by counsel, the right to call witnesses, present evidence, and confront witnesses.

Aliens who attempt to enter the U.S. without proper documents can be excluded unless they assert some reasonable basis for entering the United States or claim asylum, in which case they are entitled to go before an Administrative Law Judge and receive a full scale hearing.

Requires speedy asylum hearings: If alien is not given asylum hearing within 45 days of the filing of the application, the alien, if detained, will be released on parole.

Imposes various time limits in the processing of asylum claims.

#### *D. Adjustment of Status*

Adjustment of status procedure would not be available to aliens who have violated the terms of their nonimmigrant visa.

## II. LEGAL IMMIGRATION

#### *A. Labor Certification*

Labor certification can be granted on the basis of nationwide job market data or on a case by case basis. Certification must include a finding that sufficient U.S. workers could not be trained within a reasonable time.

Allows certain aliens having labor certifications to remain in the United States if a visa will likely be available within two years.

#### *B. G-4's*

Relief provisions are provided for certain children and widowed spouses of employees of international organizations.

#### *C. Nonimmigrants*

Special procedures established for H-2 seasonal workers in agriculture: the employer must apply to the Secretary of Labor no more than 50 days in advance of need, asking for foreign workers; employer then must attempt to recruit domestic

workers; the Secretary of Labor must provide a decision on the certification no later than 20 days in advance of need; if the Secretary of Labor determines that a certain number of qualified U.S. workers will be available at the time needed, but at the determined time those workers are not qualified and available, an expedited procedure to determine need would be available.

#### *D. Visa Waiver*

After the Immigration and Naturalization Service has implemented a system to track the entry and exit of nonimmigrants, the State Department may establish a three year pilot nonimmigrant visa waiver program for five countries which provide or will provide a similar benefit to the United States. The visa refusal and visa abuse rates for the nationals of such countries must be minimal, and the visitors must have nonrefundable, roundtrip tickets.

#### *E. Foreign Students*

Foreign students who enter the U.S. after date of enactment will not be allowed to adjust status or return to the U.S. until they have resided in their home countries for two years, unless such a student is an immediate relative of a U.S. citizen. Foreign students who entered before date of enactment will not be permitted to adjust status, and must leave the United States to seek a visa if they wish to return. Exceptions are allowed, until 1989, for students with degrees in natural science, engineering, computer science, or mathematics with certified job offers in universities or industry. Exceptions also for adjustment to three year nonimmigrant training status in industry.

### III. LEGALIZATION

Permanent resident status (not citizenship) for aliens who have continuously resided in the U.S. since January 1, 1977 and who are not excluded. (See below.)

Temporary legal status for (a) aliens who have continuously resided in the U.S. since January 1, 1980, and (b) "Cuban/Haitian entrants" who were previously given special legal status, and who are not excludable. (See below.)

Persons receiving temporary status will be able to adjust to permanent resident status three years from date of enactment. If they have not done so three and one-half years after date of enactment, their temporary resident status expires.

Federally funded public assistance (other than medical care, aid to aged, blind, or disabled, and for serious injury or in the interest of public health) will not be available to permanent residents for three years and temporary residents for six years (other than "Cuban/Haitian entrants").

Persons will not be eligible for legalization who:

- Have been convicted of a felony or three misdemeanors committed in the United States;

- Have assisted in political persecution;

- Have been convicted of a crime involving moral turpitude, or two or more offenses for which sentences aggregating five or more years were imposed;

- The government has reason to believe seek to enter for activities inimical to the welfare, safety or security of the United States;

- Are, or have been, anarchists, Communists, or who advocate the overthrow of the government;

- Are Nazis;

- Would engage in subversive activities;

- Have been convicted of a drug violation, other than simple possession of 30 grams or less of marijuana;

- Are nonimmigrant exchange aliens subject to a two year foreign residency requirement.

Authorizes "such sums" for each year through fiscal year 1989 for the purpose of reimbursing state and local governments for increased educational and public assistance costs resulting from the legalization program.

Provides that aliens in the United States continuously since January 1, 1973 may adjust to permanent resident status if of good moral character and not ineligible for citizenship.

### IV. MISCELLANEOUS

#### *A. Putative Fathers*

Recognizes, for preference petitioning purposes, the relationship between a biological father and his illegitimate child.



*B. Retirees*

Allows self-sufficient aliens who entered United States prior to 1978 in expectation of obtaining an immigrant visa as retirees to adjust to permanent resident status.

98TH CONGRESS  
1ST SESSION

# H. R. 1510

To revise and reform the Immigration and Nationality Act, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 1983

Mr. MAZZOLI introduced the following bill; which was referred to the Committee on the Judiciary

---

## A BILL

To revise and reform the Immigration and Nationality Act, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3                   SHORT TITLE; REFERENCES IN ACT

4       SECTION 1. (a) This Act may be cited as the "Immigra-  
5       tion Reform and Control Act of 1983".

6       (b) Except as otherwise specifically provided, whenever  
7       in this Act an amendment or repeal is expressed in terms of  
8       an amendment to, or repeal of, a section or other provision,



- 1 the reference shall be considered to be made to a section or
- 2 other provision of the Immigration and Nationality Act.

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 Sec. 202. G-4 special immigrants.  
 Sec. 203. Miscellaneous changes.

#### PART B—NONIMMIGRANTS

- Sec. 211. H-2 workers.  
 Sec. 212. Students.  
 Sec. 213. Visa waiver for certain visitors.

### TITLE III—LEGALIZATION

- Sec. 301. Legalization.  
 Sec. 302. Updating registry date to January 1, 1973.  
 Sec. 303. State legalization assistance.

1     **TITLE I—CONTROL OF ILLEGAL IMMIGRATION**

2                     **PART A—EMPLOYMENT**

3             **CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS**

4             SEC. 101. (a)(1) Chapter 8 of title II is amended by  
5 inserting after section 274 (8 U.S.C. 1324) the following new  
6 section:

7                     **“UNLAWFUL EMPLOYMENT OF ALIENS**

8             **“SEC. 274A. (a)(1) It is unlawful for a person or other**  
9     entity after the date of the enactment of this section to hire,  
10 or to recruit or refer for a fee, for employment in the United  
11 States—

12                     **“(A) an alien knowing the alien is an unauthor-**  
13     ized alien (as defined in paragraph (4)) with respect to  
14     such employment, or

15                     **“(B) an individual without complying with the re-**  
16     quirements of subsection (b).

17 Subparagraph (B) shall not apply to a person or entity which  
18 employs three or fewer employees.

19             **“(2) It is unlawful for a person or other entity, after**  
20 hiring an alien for employment subsequent to the date of the  
21 enactment of this section and in accordance with paragraph  
22 (1), to continue to employ the alien in the United States  
23 knowing the alien is (or has become) an unauthorized alien  
24 with respect to such employment.



1       “(3) A person or entity that establishes that it has com-  
2     plied in good faith with the requirements of subsection (b)  
3     with respect to the hiring, recruiting, or referral for employ-  
4     ment of an alien in the United States has established an af-  
5     firmative defense that the person or entity has not violated  
6     paragraph (1)(A) with respect to such hiring, recruiting, or  
7     referral.

8       “(4) As used in this section, the term ‘unauthorized  
9     alien’ means, with respect to the employment of an alien at a  
10    particular time, that the alien is not at that time either (A) an  
11    alien lawfully admitted for permanent residence, or (B) au-  
12    thorized to be so employed by this Act or by the Attorney  
13    General.

14       “(b) Except as provided in subsection (c), the require-  
15    ments referred to in paragraphs (1)(B) and (3) of subsection  
16    (a) are, in the case of a person or other entity hiring, recruit-  
17    ing, or referring an individual for employment in the United  
18    States, that—

19       “(1) the person or entity must attest, under penal-  
20    ty of perjury and on a form designated or established  
21    by the Attorney General by regulation, that it has  
22    verified that the individual is eligible to be employed  
23    (or recruited or referred for employment) in the United  
24    States by examining the individual’s—

25       “(A) United States passport, or

1           “(B)(i) social security account number card  
2           or certificate of birth in the United States or es-  
3           tablishing United States nationality at birth, and  
4           “(ii)(I) alien documentation, identification,  
5           and telecommunication card, or similar fraud-  
6           resistant card issued by the Attorney General to  
7           aliens and designated for use for this purpose,

8           “(II) driver’s license or similar document  
9           issued for the purpose of identification by a State,  
10          if it contains a photograph of the individual or  
11          such other personal identifying information relat-  
12          ing to the individual as the Attorney General  
13          finds, by regulation, sufficient for purposes of this  
14          section, or

15          “(III) in the case of individuals under 16  
16          years of age or in a State which does not provide  
17          for issuance of an identification document (other  
18          than a driver’s license) referred to in subclause  
19          (II), documentation of personal identity of such  
20          other type as the Attorney General finds, by reg-  
21          ulation, provides a reliable means of identification;

22          “(2) the individual must attest, under penalty of  
23          perjury and on the form designated or established for  
24          purposes of paragraph (1), that the individual is a citi-  
25          zen or national of the United States, an alien lawfully



1 admitted for permanent residence, or an alien who is  
2 authorized under this Act or by the Attorney General  
3 to be hired, recruited, or referred for such employment;  
4 and

5 “(3) after completion of such form in accordance  
6 with paragraphs (1) and (2), the person or entity must  
7 retain the form and make it available for inspection by  
8 officers of the Service or of the Department of Labor  
9 during a period beginning on the date of the hiring, re-  
10 cruiting, or referral of the individual and ending—

11 “(A) in the case of the recruiting or referral  
12 (without hiring) of an individual, three years after  
13 the date of such recruiting or referral, and

14 “(B) in the case of the hiring of an individu-  
15 al—

16 “(i) three years after the date of such  
17 hiring, or

18 “(ii) one year after the date the individ-  
19 ual’s employment is terminated,  
20 whichever is later.

21 A person or entity has complied with paragraph (1) with re-  
22 spect to examination of a document if the document reason-  
23 ably appears on its face to be genuine. Notwithstanding any  
24 other provision of law, the person or entity may copy a docu-  
25 ment presented by an individual pursuant to this subsection

1 and may retain the copy, but only (except as otherwise per-  
2 mitted under law) for the purpose of complying with the re-  
3 quirements of this subsection.

4       “(c)(1)(A) Within three years after the date of the enact-  
5 ment of this section, the President shall implement such  
6 changes in or additions to the requirements of subsection (b)  
7 as conform to the requirements of paragraph (2) of this sub-  
8 section and as may be necessary to establish a secure system  
9 to determine employment eligibility in the United States. In  
10 considering possible changes or additions, the President shall  
11 consider use of a telephone verification system.

12       “(B) Nothing in this subsection shall be construed to  
13 authorize, directly or indirectly, the issuance or use of nation-  
14 al identification cards.

15       “(2) Such changes or additions shall be designed in a  
16 manner so that—

17               “(A) personal information utilized by the system is  
18 available only to employers, recruiters, and referrers  
19 for employment and to Government agencies and only  
20 to the extent necessary for the purpose of verifying  
21 that an individual is not an unauthorized alien,

22               “(B) if the changes or additions provide a verifica-  
23 tion method to determine an individual’s eligibility to  
24 be employed in the United States—

1                   “(i) the verification may not be withheld for  
2                   any reason other than that the individual is an un-  
3                   authorized alien, and

4                   “(ii) the verification method may not be used  
5                   for law enforcement purposes (other than for en-  
6                   forcement of this section or section 1546 of title  
7                   18, United States Code), and

8                   “(C) if the system requires individuals to present  
9                   a card or other document designed specifically for use  
10                  for this purpose at the time of hiring, recruitment, or  
11                  referral, then such document may not be required (i) to  
12                  be presented for any purpose other than under this sec-  
13                  tion (or enforcement of section 1546 of title 18, United  
14                  States Code) or (ii) to be carried on one’s person.

15                  “(d)(1)(A) In the case of a person or entity which has  
16                  not previously been cited under this subparagraph, if the At-  
17                  torney General, based on evidence or information he deems  
18                  persuasive, reasonably concludes that the person or entity  
19                  has violated paragraph (1)(A) or (2) of subsection (a) with  
20                  respect to the hiring, or recruiting or referring for a fee, for  
21                  employment of an alien, the Attorney General may serve a  
22                  citation on the person or entity containing a notification that  
23                  the alien’s employment is not authorized and a warning of  
24                  the penalties and injunctive remedy set forth in this subsec-  
25                  tion.



1       “(B) In the case of a person or entity which has previ-  
2       ously been cited under subparagraph (A), which is determined  
3       to have violated paragraph (1)(A) or (2) of subsection (a), and  
4       which—

5               “(i) has not previously been subject to a civil pen-  
6       alty under this subparagraph, the person or entity shall  
7       be subject to a civil penalty of \$1,000 for each unau-  
8       thorized alien with respect to which the violation oc-  
9       curred;

10              “(ii) has previously been subject to a civil penalty  
11       under this subparagraph, the person or entity shall be  
12       subject to a civil penalty of \$2,000 for each unauthor-  
13       ized alien with respect to which the violation occurred;  
14       and

15              “(iii) has previously been subject to a civil penalty  
16       under this subparagraph in more than one instance, the  
17       person or entity shall be fined not more than \$3,000,  
18       imprisoned not more than one year, or both, for each  
19       unauthorized alien with respect to which the violation  
20       occurred.

21       “(2) Whenever the Attorney General has reasonable  
22       cause to believe that a person or entity is engaged in a pat-  
23       tern or practice of employment, recruitment, or referral in  
24       violation of paragraph (1)(A) or (2) of subsection (a), the At-  
25       torney General may bring a civil action in the United States

1 district court for the district in which the person or entity  
2 resides or in which the violation occurred requesting such  
3 relief, including a permanent or temporary injunction, re-  
4 straining order, or other order against the person or entity, as  
5 the Attorney General deems necessary.

6 “(3)(A) In the case of a person or entity which has not  
7 previously been cited under this subparagraph, if the Attor-  
8 ney General, based on evidence or information he deems per-  
9 suasive, reasonably concludes that the person or entity has  
10 violated subsection (a)(1)(B) with respect to the hiring, or re-  
11 cruiting or referring for a fee, for employment of an individu-  
12 al, the Attorney General may serve a citation on the person  
13 or entity containing a notification of the requirements of sub-  
14 section (a)(1)(B) and a warning of the penalty set forth in  
15 subparagraph (B).

16 “(B) A person or entity which has previously been cited  
17 under subparagraph (A) and which is determined to have vio-  
18 lated subsection (a)(1)(B) shall be subject to a civil penalty of  
19 \$500 for each individual with respect to which such violation  
20 occurred.

21 “(4)(A)(i) Before issuing a citation on, or imposing a  
22 civil penalty against, a person or entity under this subsection  
23 for a violation of subsection (a), the Attorney General shall  
24 provide the person or entity with notice and, upon request  
25 made within a reasonable time (of not less than 30 days, as

1 established by the Attorney General) of the date of the  
2 notice, a hearing respecting the violation.

3       “(ii) Any hearing so requested shall be conducted before  
4 an administrative law judge. The hearing shall be conducted  
5 in accordance with the requirements of section 554 of title 5,  
6 United States Code and rules of the United States Immigra-  
7 tion Board established under section 107. The hearing shall  
8 be held within 200 miles of the place where the person or  
9 entity resides or of the place where the alleged violation oc-  
10 curred. If no hearing is so requested, the assessment shall  
11 constitute a final and unappealable order.

12       “(iii) A person or entity (including the Attorney Gener-  
13 al) adversely affected by a final order respecting an assess-  
14 ment may, within 60 days after the date the final order is  
15 issued, file a petition in the Court of Appeals for the appro-  
16 priate circuit for review of the order.

17       “(B)(i) If the person or entity against whom a civil pen-  
18 alty is assessed fails to pay the penalty within the time pre-  
19 scribed in such order, the Attorney General shall file a suit to  
20 collect the amount in the United States district court for the  
21 district in which the person or entity resides or in which the  
22 violation (with respect to which the penalty was assessed)  
23 occurred.

24       “(ii) In any suit described in clause (i) based on an as-  
25 sessment—



1           “(I) made after a hearing before an administrative  
2       law judge, the suit shall be determined solely upon the  
3       administrative record upon which the civil penalty was  
4       assessed and the administrative law judge’s findings of  
5       fact, if supported by substantial evidence on the record  
6       considered as a whole, shall be conclusive, or

7           “(II) for which a timely request for a hearing was  
8       not made, the validity and appropriateness of the final  
9       order imposing the assessment shall not be subject to  
10      review.

11          “(5)(A) In determining the level of sanction that is ap-  
12      plicable under paragraph (1) for violations of paragraph (1)(A)  
13      or (2) of subsection (a) and that is applicable under paragraph  
14      (3) for violations of subsection (a)(1)(B), determinations of  
15      more than one violation in the course of a single proceeding  
16      or adjudication shall be counted as a single determination.

17          “(B) In applying this subsection in the case of a person  
18      or entity composed of distinct, physically separate subdivi-  
19      sions each of which provides separately for the hiring, re-  
20      cruiting, or referral for employment without reference to the  
21      practices of, or under the control of, or common control with,  
22      another subdivision, each such subdivision shall be considered  
23      a separate person or entity.

24          “(e) In providing documentation or endorsement of au-  
25      thorization of aliens (other than aliens lawfully admitted for

1 permanent residence) to be employed in the United States,  
2 the Attorney General shall provide that any limitations with  
3 respect to the period or type of employment or employer shall  
4 be conspicuously stated on the documentation or endorse-  
5 ment.

6 “(f) The provisions of this section preempt any State or  
7 local law imposing civil or criminal sanctions upon those who  
8 employ, or recruit or refer for a fee for employment, unau-  
9 thorized aliens.

10 “(g)(1) The President shall monitor, and shall consult  
11 with the Congress every six months concerning, the imple-  
12 mentation of this section (including the effectiveness of the  
13 verification and record-keeping system described in subsec-  
14 tion (b) and the status of the changes and additions described  
15 in subsection (c)) and the impact of this section on the econo-  
16 my of the United States and on employment (including dis-  
17 crimination in employment) of citizens and aliens in the  
18 United States, on the illegal entry of aliens into the United  
19 States, and on the failure of aliens who have legally entered  
20 the United States to remain in legal status. For the purpose  
21 of conducting such monitoring and beginning development of  
22 the changes and additions described in subsection (c), there  
23 are authorized to be appropriated \$10,000,000 for fiscal year  
24 1984.

1       “(2)(A) The Civil Rights Commission shall monitor the  
2 implementation and enforcement of the provisions of this sec-  
3 tion and shall investigate allegations that the enforcement or  
4 implementation of this section has been conducted in a  
5 manner that results in unlawful discrimination by race or na-  
6 tionality against citizens of the United States or aliens who  
7 are not unauthorized aliens (as defined in subsection (a)(4)).

8       “(B) The Civil Rights Commission, not later than 18  
9 months after the month in which this section is enacted, shall  
10 prepare and transmit to the Committees on the Judiciary of  
11 the House of Representatives and of the Senate a report de-  
12 scribing the implementation and enforcement of the provi-  
13 sions of this section during the preceding period, for the pur-  
14 pose of determining if a pattern of such unlawful discrimina-  
15 tion has resulted. Two more such reports shall be prepared  
16 and transmitted 36 and 54 months after the month in which  
17 this section is enacted.

18       “(3) The Attorney General, jointly with the Secretary of  
19 Labor and the Chairman of the Equal Employment Opportu-  
20 nity Commission, shall establish a task force to monitor the  
21 implementation of this section and to review and investigate  
22 complaints registered of employment discrimination which  
23 may be attributable to the operation of this section.”.

24       “(2)(A) No citation, civil or criminal penalty, or injunc-  
25 tion may be issued under section 274A of the Immigration



1 and Nationality Act for the hiring, or recruiting or referring  
2 for a fee, for employment of individuals occurring before the  
3 first day of the seventh month beginning after the date of the  
4 enactment of this Act.

5 (B) During the one-year period beginning on the date of  
6 the enactment of this Act, the Attorney General, in coopera-  
7 tion with the Secretaries of Agriculture, Commerce, Health  
8 and Human Services, Labor, and the Treasury and the Ad-  
9 ministrator of the Small Business Administration, shall dis-  
10 seminate forms and information to employers, employment  
11 agencies, and organizations representing employees and pro-  
12 vide for public education respecting the requirements of sec-  
13 tion 274A of the Immigration and Nationality Act. For the  
14 purpose of carrying out this subparagraph, there are author-  
15 ized to be appropriated \$10,000,000 for fiscal year 1984.

16 (C) The Attorney General shall, not later than the first  
17 day of the seventh month beginning after the date of the  
18 enactment of this Act, first issue, on an interim or other  
19 basis, such regulations as may be necessary in order to imple-  
20 ment section 274A of the Immigration and Nationality Act.

21 (3) The table of contents is amended by inserting after  
22 the item relating to section 274 the following new item:

“Sec. 274A. Unlawful employment of aliens.”.

23 (b)(1) The Migrant and Seasonal Agricultural Worker  
24 Protection Act (Public Law 97-470) is amended—

1 (A) by striking out “101(a)(15)(H)(ii)” in para-  
2 graphs (8)(B) and (10)(B) of section 3 (29 U.S.C. 1802)  
3 and inserting in lieu thereof “101(a)(15)(H)(ii)(a)”;

4 (B) in section 103(a) (29 U.S.C. 1813(a))—

5 (i) by striking out “or” at the end of para-  
6 graph (4),

7 (ii) by striking out the period at the end of  
8 paragraph (5) and inserting in lieu thereof “; or”,  
9 and

10 (iii) by adding at the end the following new  
11 paragraph:

12 “(6) has been found to have violated paragraph  
13 (1) or (2) of section 274A of the Immigration and Na-  
14 tionality Act.”;

15 (C) by striking out section 106 (29 U.S.C. 1816)  
16 and the corresponding item in the table of contents;  
17 and

18 (D) by striking out “section 106” in section  
19 501(b) (29 U.S.C. 1856(b)) and by inserting in lieu  
20 thereof “paragraph (1) or (2) of section 274A of the  
21 Immigration and Nationality Act”.

22 (2) The amendments made by paragraph (1) shall apply  
23 to the employment, recruitment, referral, or utilization of the  
24 services of an individual occurring on or after the first day of

1 the seventh month beginning after the date of the enactment  
2 of this Act.

3       FRAUD AND MISUSE OF CERTAIN DOCUMENTS

4       SEC. 102. (a) Section 1546 of title 18, United States  
5 Code, is amended—

6           (1) by amending the heading to read as follows:  
7 “§ 1546. **Fraud and misuse of visas, permits, and other**  
8       **documents**”;

9           (2) by striking out “or other document required  
10 for entry into the United States” in the first paragraph  
11 and inserting in lieu thereof “border crossing card,  
12 alien registration receipt card, or other document pre-  
13 scribed by statute or regulation for entry into or as evi-  
14 dence of authorized stay or employment in the United  
15 States”,

16           (3) by striking out “or document” in the first  
17 paragraph and inserting in lieu thereof “border cross-  
18 ing card, alien registration receipt card, or other docu-  
19 ment prescribed by statute or regulation for entry into  
20 or as evidence of authorized stay or employment in the  
21 United States”,

22           (4) by striking out “\$2,000” and inserting in lieu  
23 thereof “\$5,000”,

24           (5) by inserting “(a)” before “Whoever” the first  
25 place it appears, and



1 (6) by adding at the end the following new sub-  
2 sections:

3 “(b) Whoever knowingly uses an identification document  
4 (other than one issued lawfully for the use of the possessor)  
5 or a false identification document for the purpose of satisfying  
6 a requirement of subsection (b) or (c) of section 274A of the  
7 Immigration and Nationality Act, shall be fined not more  
8 than \$5,000 or imprisoned not more than two years, or both.

9 “(c) This section does not prohibit any lawfully author-  
10 ized investigative, protective, or intelligence activity of a law  
11 enforcement agency of the United States, a State, or a subdi-  
12 vision of a State, or of an intelligence agency of the United  
13 States, or any activity authorized under title V of the Orga-  
14 nized Crime Control Act of 1970 (18 U.S.C. note prec.  
15 3481).”.

16 (b) The item relating to section 1546 in the table of  
17 sections of chapter 75 of such title is amended to read as  
18 follows:

“1546. Fraud and misuse of visas, permits, and other documents.”.

## 19 PART B—ENFORCEMENT AND FEES

### 20 IMMIGRATION ENFORCEMENT ACTIVITIES

21 SEC. 111. (a) It is the sense of Congress that an essen-  
22 tial element of the program of immigration control and  
23 reform established by this Act is an increase in border patrol  
24 and other enforcement activities of the Immigration and Nat-  
25 uralization Service and of other appropriate Federal agencies

1 in order to prevent and deter the illegal entry of aliens into  
2 the United States.

3 (b) In order to do this in the most effective and efficient  
4 manner, it is the intent of Congress to provide, through the  
5 annual authorization of appropriations process for the De-  
6 partment of Justice and for other appropriate Federal agen-  
7 cies, for a controlled and closely monitored increase in the  
8 level of the border patrol and of other appropriate enforce-  
9 ment activities of the Immigration and Naturalization Service  
10 and of such other Federal agencies to achieve an effective  
11 level of control of illegal immigration.

12 UNLAWFUL TRANSPORTATION OF ALIENS TO THE UNITED  
13 STATES

14 SEC. 112. Section 274 (8 U.S.C. 1324) is amended—

15 (1) by striking out “: *Provided, however*” and all  
16 that follows up to the period at the end of subsection  
17 (a),

18 (2) by redesignating subsection (c) as subsection  
19 (d), and

20 (3) by inserting after subsection (b) the following  
21 new subsection:

22 “(c) Any person who, knowing or in reckless disregard  
23 of the fact that an alien has not received prior official authori-  
24 zation to come to, enter, or reside in the United States,  
25 brings to or attempts to bring to the United States such alien

1 by himself or through another in any manner whatsoever,  
 2 regardless of whether or not fraudulent, evasive, or surrepti-  
 3 tious means are used and regardless of any official action  
 4 which may later be taken with respect to such alien, shall, for  
 5 each transaction constituting a violation of this subsection  
 6 (regardless of the number of aliens involved)—

7 “(1) be fined not more than \$5,000 or imprisoned  
 8 not more than one year, or both, or

9 “(2) in the case of—

10 “(A) a second or subsequent offense under  
 11 this subsection,

12 “(B) an offense done for the purpose of com-  
 13 mercial advantage or private gain, or

14 “(C) an offense in which the alien is not  
 15 upon arrival immediately brought and presented  
 16 to an appropriate immigration officer at a desig-  
 17 nated port of entry,

18 be fined not more than \$10,000 or imprisoned not  
 19 more than five years, or both.”.

20 FEES

21 SEC. 113. (a) Section 281 (8 U.S.C. 1351) is amend-  
 22 ed—

23 (1) by amending the heading to read as follows:

24 “NONIMMIGRANT VISA FEES AND ALIEN USER FEES”;

25 (2) by inserting “(a)” after “SEC. 281.”; and



1           (3) by adding at the end the following new sub-  
2       section:

3       “(b) The Attorney General, in consultation with the  
4       Secretary of State, may impose fees on aliens with respect to  
5       their use of border facilities or services of the Service in such  
6       amounts as may reasonably reflect the portion of costs of  
7       maintenance and operation of such facilities and provision of  
8       such services attributable to aliens’ use of such facilities and  
9       services.”.

10       (b) The item in the table of contents relating to section  
11       281 is amended to read as follows:

      “Sec. 281. Nonimmigrant visa fees and alien user fees.”.

12       PART C—ADJUDICATION PROCEDURES AND ASYLUM

13                       INSPECTION AND EXCLUSION

14       SEC. 121. Subsection (b) of section 235 (8 U.S.C. 1225)  
15       is amended to read as follows:

16       “(b)(1)(A) An immigration officer shall inspect each  
17       alien who is seeking entry to the United States.

18       “(B)(i) If the examining immigration officer determines  
19       that the alien seeking entry—

20               “(I) does not present the documentation required  
21       (if any) to obtain entry to the United States,

22               “(II) does not have any reasonable basis for legal  
23       entry into the United States, and

24               “(III) does not indicate an intention to apply for  
25       asylum under section 208,

1 subject to clause (ii), the alien shall be excluded from entry  
2 into the United States without a hearing.

3       “(ii) Before excluding an alien without a hearing under  
4 clause (i), the examining immigration officer shall inform the  
5 alien of his right to have an administrative law judge redeter-  
6 mine the conditions described in clause (i). If the alien re-  
7 quests such a redetermination by an administrative law  
8 judge, the alien shall not be so excluded without a hearing  
9 until and unless the administrative law judge (after a nonad-  
10 versarial, summary proceeding in which the alien may appear  
11 personally) redetermines that the alien meets the conditions  
12 of subclauses (I) through (III) of clause (i).

13       “(C) If the examining immigration officer determines  
14 that an alien seeking entry, other than an alien crewman and  
15 except as otherwise provided in subparagraph (B), subsection  
16 (c), or section 273(d), is otherwise not clearly and beyond a  
17 doubt entitled to land, the alien shall be detained for a hear-  
18 ing before an administrative law judge on exclusion of the  
19 alien.

20       “(2) The decision of the examining immigration officer,  
21 if favorable to the admission of any alien, shall be subject to  
22 challenge by any other immigration officer and such chal-  
23 lenge shall operate to take the alien, whose privilege to land  
24 is so challenged, before an administrative law judge for a  
25 hearing on exclusion of the alien.

1       “(3) The Attorney General shall establish, after consul-  
 2       tation with the Judiciary Committees of the Congress, proce-  
 3       dures which assure that aliens are not excluded under para-  
 4       graph (1)(B) without an inquiry into their reasons for seeking  
 5       entry into the United States.

6       “(4) In the case of an alien who would be excluded from  
 7       entry under paragraph (1)(B) but indicating an intention to  
 8       apply for asylum, the exclusion hearing with respect to such  
 9       entry shall be limited to the issues raised in connection with  
 10      the alien’s application for asylum.”.

11      UNITED STATES IMMIGRATION BOARD AND ESTABLISH-  
 12      MENT OF ADMINISTRATIVE LAW JUDGE SYSTEM

13      SEC. 122. (a) Title I is amended by adding at the end  
 14      the following new section:

15               “UNITED STATES IMMIGRATION BOARD; USE OF  
 16               ADMINISTRATIVE LAW JUDGES

17      “SEC. 107. (a)(1) There is established, as an independ-  
 18      ent agency in the Department of Justice, a United States  
 19      Immigration Board (hereinafter in this section referred to as  
 20      the ‘Board’) composed of a Chairman and five other members  
 21      appointed by the President by and with the advice and con-  
 22      sent of the Senate.

23      “(2) The term of office of the Chairman and all other  
 24      members of the Board shall be six years except that—



1           “(A) of the members first appointed under this  
2       subsection, two shall be appointed for a term of two  
3       years, two shall be appointed for a term of four years,  
4       and two shall be appointed for a term of six years,

5           “(B) a member appointed to fill a vacancy occur-  
6       ring before the expiration of the term for which his  
7       predecessor was appointed shall be appointed only for  
8       the remainder of such term, and

9           “(C) a member may serve after the expiration of  
10      his term until reappointed or his successor has taken  
11      office.

12          “(3) A member of the Board may be removed by the  
13      President only for neglect of duty or malfeasance in office.

14          “(4) Members of the Board (other than the Chairman)  
15      are entitled, subject to amounts provided in advance in ap-  
16      propriation Acts, to receive compensation at the rate now or  
17      hereafter provided for grade GS-17 of the General Schedule,  
18      under section 5332 of title 5, United States Code. The Chair-  
19      man is entitled, subject to amounts provided in advance in  
20      appropriation Acts, to receive compensation at the rate now  
21      or hereafter provided for grade GS-18 of such General  
22      Schedule.

23          “(5) The Chairman shall be responsible on behalf of the  
24      Board for the administrative operations of the Board. The

1 Board shall establish rules of practice and procedure for itself  
2 and for the administrative law judges.

3 “(b)(1) The Board shall hear and determine appeals  
4 from—

5 “(A) final decisions of administrative law judges  
6 under this Act, other than a redetermination excluding  
7 an alien under section 235(b)(1)(B) or a determination  
8 granting voluntary departure under section 244(e)  
9 within a period of at least 30 days if the sole ground of  
10 appeal is that a greater period of departure time should  
11 have been fixed;

12 “(B) decisions on applications for the exercise of  
13 the discretionary authority contained in section 212(c)  
14 or section 212(d)(3)(B);

15 “(C) decisions involving the imposition of adminis-  
16 trative fines and penalties under title II of this Act, in-  
17 cluding mitigation thereof;

18 “(D)(i) decisions on petitions filed in accordance  
19 with section 204, other than petitions to accord prefer-  
20 ence status under paragraph (3) or (6) of section 203(a)  
21 or petitions on behalf of a child described in section  
22 101(b)(1)(F), and

23 “(ii) decisions on requests for revalidation and de-  
24 cisions revoking approval of such petitions under sec-  
25 tion 205; and

1           “(E) determinations relating to bond, parole, or  
2           detention of an alien under sections 242(a) and 242(c).

3           “(2) Three members of the Board constitute a quorum of  
4           the Board, except that the Chairman (or any member of the  
5           Board designated by the Chairman) is empowered to decide  
6           nondispositive motions.

7           “(3) The Board shall act in panels of three or more  
8           members or en banc (as designated by the Chairman in ac-  
9           cordance with the rules of the Board). A final decision of such  
10          a panel shall be considered to be a final decision of the Board.

11          “(4)(A) Appeals to the Board from final orders of depor-  
12          tation or exclusion (including an order respecting asylum con-  
13          tained in such an order) shall be filed not later than 20 days  
14          after the date of the final order.

15          “(B) The Board shall review the decision of an adminis-  
16          trative law judge based solely upon the administrative record  
17          upon which the decision is made and the findings of fact in  
18          the judge’s order, if supported by reasonable, substantial, and  
19          probative evidence on the record considered as a whole, shall  
20          be conclusive.

21          “(5) A final decision of the Board shall be binding on all  
22          administrative law judges, immigration officers, and consular  
23          officers under this Act unless and until otherwise modified or  
24          reversed by a court of the United States.



1       “(6) In a case in which the Board is considering an  
2 appeal of a decision of an administrative law judge respecting  
3 an application for asylum, the Board shall render its decision  
4 on the appeal not later than 60 days after the date the appeal  
5 is filed.

6       “(c)(1) The Chairman, in accordance with sections 3105  
7 and 5108 and other provisions of title 5, United States Code,  
8 relating to administrative law judges in the competitive serv-  
9 ice, shall—

10           “(A) appoint administrative law judges, except  
11 that no more than 70 such judges may be appointed  
12 and hold office under this section at any time, and

13           “(B) designate one such judge to serve as chief  
14 administrative law judge.

15       “(2) In accordance with rules established by the Board,  
16 the chief administrative law judge—

17           “(A) shall have responsibility for the administra-  
18 tive activities affecting administrative law judges, and

19           “(B) may designate any administrative law judge  
20 in active service to hear and decide any cases de-  
21 scribed in paragraph (3).

22       “(3) Administrative law judges shall hear and decide—

23           “(A) exclusion cases under sections 236 and  
24 360(c),

1           “(B) deportation and suspension of deportation  
2 cases under sections 242, 243, and 244,

3           “(C) rescission of adjustment of status cases under  
4 sections 245A(b)(4) and 246,

5           “(D) with respect to judges designated to hear  
6 such cases, applications for asylum under section 208,

7           “(E) the assessment of civil penalties under sec-  
8 tion 274A, and

9           “(F) such other cases arising under this Act as  
10 the Attorney General may provide by regulation.

11 Administrative law judges may also, without a formal hear-  
12 ing, make redeterminations pursuant to section  
13 235(b)(1)(B)(ii).

14       “(4) In considering and deciding cases coming before  
15 them, administrative law judges may administer oaths, shall  
16 record and receive evidence and render findings of fact and  
17 conclusions of law, shall determine all applications for discre-  
18 tionary relief which may properly be raised in the proceed-  
19 ings, and shall exercise such discretion conferred upon the  
20 Attorney General by law as the Attorney General may speci-  
21 fy for the just and equitable disposition of cases coming  
22 before such judges.”.

23       (b) The table of contents is amended by inserting imme-  
24 diately after the item relating to section 106 the following  
25 new item:

“Sec. 107. United States Immigration Board; use of administrative law judges.”.

## 1 JUDICIAL REVIEW

2 SEC. 123. (a) Subsection (a) of section 106 (8 U.S.C.  
3 1105a) is amended—

4 (1) by striking out “AND EXCLUSION” in the  
5 heading and inserting in lieu thereof “, EXCLUSION,  
6 AND ASYLUM”;

7 (2) in the matter before paragraph (1), by striking  
8 out “The procedure” and all that follows through “any  
9 prior Act” and inserting in lieu thereof the following:  
10 “Notwithstanding section 279 of this Act, section 1331  
11 of title 28, United States Code, or any other provision  
12 of law, the procedures prescribed by and all the provi-  
13 sions of chapter 158 of title 28, United States Code,  
14 shall apply to, and shall be the sole and exclusive pro-  
15 cedure for, the judicial review of all final orders of ex-  
16 clusion or deportation (including determinations re-  
17 specting asylum encompassed within such orders and  
18 regardless of whether or not the alien is in custody and  
19 not including exclusions effected without a hearing pur-  
20 suant to section 235(b)(1)(B)) made against aliens  
21 within (or seeking entry into) the United States”;

22 (3) in paragraph (1), by striking out “not later  
23 than six months” and all that follows through “which-  
24 ever is the later” and inserting in lieu thereof “by the



1 alien involved or the Service not later than 30 days  
2 from the date of the final order”;

3 (4) by inserting “, in the case of review sought by  
4 an individual petitioner,” in paragraph (2) after “in  
5 whole or in part, or”;

6 (5) by inserting “in the case of review sought by  
7 an individual petitioner,” in paragraph (3) after “(3)”;

8 (6) by inserting “exclusion or” before “deporta-  
9 tion” in paragraphs (3) and (4);

10 (7) by striking out “Attorney General’s findings of  
11 fact” in paragraphs (4) and (6) and inserting in lieu  
12 thereof “findings of fact in the order”;

13 (8) by striking out “(4) except as provided in” in  
14 paragraph (4) and inserting in lieu thereof “(4)(A)  
15 except as provided in subparagraph (B) and in”;

16 (9) by adding at the end of paragraph (4) the fol-  
17 lowing new subparagraph:

18 “(B) to the extent that an order relates to a de-  
19 termination on an application for asylum, the court  
20 shall only have jurisdiction to review (i) whether the  
21 jurisdiction of the administrative law judge or the  
22 United States Immigration Board was properly exer-  
23 cised, (ii) whether the asylum determination was made  
24 in accordance with applicable laws and regulations, (iii)  
25 the constitutionality of the laws and regulations pursu-

1 ant to which the determination was made, and (iv)  
2 whether the decision was arbitrary or capricious;”;

3 (10) in paragraph (7)—

4 (A) by inserting “or exclusion” after “depor-  
5 tation” each place it appears,

6 (B) by striking out “subsection (c) of section  
7 242 of this Act” and inserting in lieu thereof  
8 “section 235(b) or 242(c)”,

9 (C) by striking out “a deportation order;”  
10 and inserting in lieu thereof “an exclusion or de-  
11 portation order;”, and

12 (D) by inserting “and” at the end thereof;

13 (11) by striking out “; and” at the end of para-  
14 graph (8) and inserting in lieu thereof a period; and

15 (12) by striking out paragraph (9).

16 (b) Subsection (b) of such section is amended to read as  
17 follows:

18 “(b)(1) Nothing in the provisions of this section shall be  
19 construed as limiting the right of habeas corpus under chap-  
20 ter 153 of title 28, United States Code. Petitions for habeas  
21 corpus based upon custody effected pursuant to this Act may  
22 be brought individually or on a multiple party basis as the  
23 interests of judicial efficiency and justice may require.

1       “(2) No court shall have jurisdiction to entertain a peti-  
2   tion relating to a determination concerning asylum under sec-  
3   tion 208 except in a petition for review under subsection (a).

4       “(3) Notwithstanding any other provision of law, no  
5   court of the United States shall have jurisdiction to review  
6   determinations of administrative law judges or of the United  
7   States Immigration Board respecting the reopening or recon-  
8   sideration of exclusion or deportation proceedings or asylum  
9   determinations outside of such proceedings, the reopening of  
10  an application for asylum because of changed circumstances,  
11  the Attorney General’s denial of a stay of execution of an  
12  exclusion or deportation order, or a redetermination to ex-  
13  clude an alien from entering the United States under section  
14  235(b)(1)(B).”.

15       (c) Subsection (c) of such section is amended by striking  
16  out “deportation or of exclusion” and inserting in lieu thereof  
17  “an administrative law judge”.

18       (d) Section 279 (8 U.S.C. 1329) is amended by striking  
19  out “The district courts” in the first sentence and inserting in  
20  lieu thereof “Except as otherwise provided under section  
21  106, the district courts”.

22       (e) The item in the table of contents relating to section  
23  106 is amended to read as follows:

“Sec. 106. Judicial review of orders of deportation, exclusion, and asylum.”.

24       (f) In the case of a final order of deportation or exclusion  
25  entered before the date of the enactment of this Act, a peti-

1 tion for review with respect to that order may in no case be  
 2 filed under section 106(a)(1) of the Immigration and Nation-  
 3 ality Act later than the earlier of (1) 30 days after the date of  
 4 the enactment of this Act, or (2) the date (if any) such peti-  
 5 tion was required to be filed under the law in existence before  
 6 the date of the enactment of this Act.

# 7 ASYLUM

8 SEC. 124. (a)(1) Subsection (a) of section 208 (8 U.S.C.  
 9 1158) is amended to read as follows:

10 “(a)(1)(A) Except as provided in subparagraph (B), any  
 11 alien physically present in the United States or at a land  
 12 border or port of entry may apply for asylum in accordance  
 13 with this section.

14 “(B)(i) In the case of an alien against whom exclusion or  
 15 deportation proceedings have been instituted, the alien’s ap-  
 16 plication for asylum may not be considered unless—

17 “(I) not later than 14 days after the date of the  
 18 service of the notice instituting such proceedings, the  
 19 alien has filed notice of intention to file an application  
 20 for asylum and, not later than 30 days after the date of  
 21 filing such notice of intention, the alien has actually  
 22 filed the application for asylum,

23 “(II) the alien can make a clear showing, to the  
 24 satisfaction of the administrative law judge conducting  
 25 the proceeding, that changed circumstances after the



1       date of the notice instituting the proceeding have re-  
2       sulted in a change in the basis for the alien's claim for  
3       asylum, or

4       “(III) the administrative law judge determines,  
5       solely in his discretion, that the interests of justice re-  
6       quire the consideration of the application.

7       “(ii) An alien who has previously applied for asylum and  
8       had such application denied may not again apply for asylum  
9       unless the alien can make a clear showing that changed cir-  
10      cumstances after the date of the denial of the previous appli-  
11      cation have resulted in a change in the basis for the alien's  
12      claim for asylum.

13      “(2) Applications for asylum shall be considered before  
14      administrative law judges who are specially designated by  
15      the United States Immigration Board as having special train-  
16      ing in international relations and international law. An indi-  
17      vidual who has served as a special inquiry officer under this  
18      title before the date of the enactment of the Immigration  
19      Reform and Control Act of 1983 may not be designated to  
20      hear applications under this section, unless the individual has  
21      received such special training after the date of the enactment  
22      of this Act.

23      “(3)(A)(i) Upon the filing of an application for asylum,  
24      an administrative law judge, at the earliest practicable time  
25      and after consultation with the attorney for the Government

1 and the applicant, shall set the application for hearing on a  
2 day certain or list it for trial on a weekly or other short-term  
3 hearing calendar, so as to assure a speedy hearing.

4 “(ii) Unless the applicant consents in writing to the con-  
5 trary, the hearing on the asylum application shall commence  
6 not later than 45 days after the date the application has been  
7 filed. The holding of an asylum hearing shall not delay the  
8 holding of any exclusion or deportation proceeding.

9 “(iii) In the case of an alien who has filed an application  
10 for asylum and who has been continuously detained pursuant  
11 to section 235 or 242 since the date the application was filed,  
12 if a hearing on the application is not held on a timely basis  
13 under clause (ii) or a decision on the application rendered on  
14 a timely basis under subparagraph (D), and if actions or inac-  
15 tion by the applicant have not resulted in unreasonable delay  
16 in the proceedings, the Attorney General shall provide for the  
17 release of the alien on parole subject to such reasonable con-  
18 ditions as the Attorney General may establish to assure the  
19 presence of the alien at any appropriate proceedings.

20 “(B)(i) A hearing on the asylum application shall be  
21 open to the public, unless the applicant requests that it be  
22 closed to the public.

23 “(ii) At the time of filing of notice of intention to apply  
24 for asylum, the alien shall be advised of the privilege of being

1 represented by counsel (in accordance with section 292) and  
2 of the availability of legal services.

3       “(iii) The applicant is entitled to have the asylum hear-  
4 ing closed to the public, to present evidence and witnesses in  
5 his own behalf, to examine and object to evidence against  
6 him, and to cross-examine witnesses presented by the Gov-  
7 ernment.

8       “(C) A complete record of the proceedings and of all  
9 testimony and evidence produced at the hearing shall be  
10 kept. The hearing shall be recorded verbatim. The Attorney  
11 General, and the United States Immigration Board, shall  
12 provide that a transcript of a hearing held under this section  
13 is made available not later than 10 days after the date of  
14 completion of the hearing.

15       “(D) The administrative law judge shall render a deter-  
16 mination on the application not later than 30 days after the  
17 date of completion of the hearing. The determination of the  
18 administrative law judge shall be based only on the evidence  
19 produced at the hearing.

20       “(E) The Attorney General shall allocate sufficient re-  
21 sources so as to assure that applications for asylum are heard  
22 and determined on a timely basis under this paragraph.

23       “(4) An alien may be granted asylum only if the admin-  
24 istrative law judge determines that the alien (A) is a refugee  
25 within the meaning of section 101(a)(42)(A), and (B) does not

1 meet a condition described in one of the subparagraphs of  
2 section 243(h)(2).

3 “(5) The burden of proof shall be upon the alien apply-  
4 ing for asylum to establish the alien’s eligibility for asylum.

5 “(6) After making a determination on an application for  
6 asylum under this section, an administrative law judge may  
7 not reopen the proceeding at the request of the applicant  
8 except upon a clear showing that, since the date of such de-  
9 termination, changed circumstances have resulted in a  
10 change in the basis for the alien’s claim for asylum.”.

11 (2) Subsection (b) of such section is amended by insert-  
12 ing “(1)” after “determines that the alien” and by inserting  
13 before the period at the end the following: “, or (2) meets a  
14 condition described in one of the subparagraphs of section  
15 243(h)(2)”.

16 (3) Such section is further amended by adding at the end  
17 the following new subsection:

18 “(d) The procedures set forth in this section shall be the  
19 sole and exclusive procedure for determining asylum.”.

20 (b) Section 243(h) (8 U.S.C. 1253(h)) is amended by  
21 adding at the end the following new paragraph:

22 “(3) An application for relief under this subsection shall  
23 be considered to be an application for asylum under section  
24 208 and shall be considered in accordance with the proce-  
25 dures set forth in that section.”.



1 (c) Section 222(f) (8 U.S.C. 1202(f)) is amended by in-  
2 serting “(1)” after “(f)” and by adding at the end the follow-  
3 ing new paragraph:

4 “(2) The records or any document of the Department of  
5 Justice, the Department of State, or any other Government  
6 agency, or foreign government, pertaining to the issuance or  
7 denial of any application for asylum, refugee status, withhold-  
8 ing of deportation under sections 207, 208, and 243(h) of this  
9 Act, or any other application arising under a claim of perse-  
10 cution on account of race, religion, political opinion, national-  
11 ity, or membership in a particular social group, shall be confi-  
12 dential and exempt from disclosure and shall be used only for  
13 the formulation, amendment, administration, or enforcement  
14 of the immigration, nationality, and other laws of the United  
15 States. In the discretion of the Attorney General or the Sec-  
16 retary of State, as the case may be, certified copies of such  
17 records or document may be made available to a court which  
18 certifies that the information contained in such records or  
19 document is needed by the court in the interests of the ends  
20 of justice in a case pending before the court.”.

21 **EFFECTIVE DATES AND TRANSITION**

22 **SEC. 125. (a)(1)** Except as otherwise provided in this  
23 section, the amendments made by this part take effect on the  
24 date of the enactment of this Act.

1       (2)(A) Except as provided in subparagraph (B), the  
2 amendments made by this part (other than those made by  
3 sections 121, 123(a)(2), 123(a)(3), 123(a)(6), 123(a)(10),  
4 123(a)(12), 123(b), 123(d), and 124(b)) shall not apply to—

5           (i) any exclusion or deportation proceeding (or ad-  
6 ministrative or judicial review thereof) which was initi-  
7 ated before the hearing transition date (designated  
8 under subsection (c)(1)(A)), or

9           (ii) to any application for asylum filed before the  
10 asylum transition date (designated under subsection  
11 (c)(1)(B)).

12 In the case of such proceedings and such applications initiat-  
13 ed before such dates which continue after such dates, the  
14 United States Immigration Board shall provide that adminis-  
15 trative law judges may assume and perform such functions of  
16 special inquiry officers as may be appropriate and consistent  
17 with their duties as administrative law judges.

18       (B) Paragraphs (1)(B), (3)(B)(ii), (3)(B)(iii), (4), and (6) of  
19 section 208(a) and section 208(b) of the Immigration and Na-  
20 tionality Act (as amended by section 124(a) of this part) shall  
21 apply to applications for asylum made after the date of the  
22 enactment of this Act, except that—

23           (i) in the case of an alien against whom exclusion  
24 or deportation proceedings have been instituted as of  
25 the date of the enactment of this Act, the restriction of

1 paragraph (1)(B)(i) of section 208(a) of the Immigration  
2 and Nationality Act (as so amended) shall apply to  
3 asylum applications made more than 14 days after the  
4 date of the enactment of this Act (rather than the date  
5 of the service of the notice of such exclusion or depor-  
6 tation proceeding), and

7 (ii) references in any such paragraph to an admin-  
8 istrative law judge shall be deemed (before the asylum  
9 transition date) to be a reference to the immigration of-  
10 ficer conducting the asylum hearing.

11 (b)(1) The President shall nominate the Chairman and  
12 other members of the United States Immigration Board  
13 (hereinafter in this section referred to as the "Board") not  
14 later than 45 days after the date of the enactment of this Act.

15 (2) The Chairman, in consultation with the Attorney  
16 General, shall designate a date, not later than 45 days after  
17 the Chairman and a majority of the members of the Board  
18 are appointed, on which the Board shall assume the present  
19 functions of the Board of Immigration Appeals (under exist-  
20 ing rules and regulations).

21 (3)(A) The Board shall provide promptly for establish-  
22 ment of interim final rules of practice and procedure which  
23 will apply to the Board (when not acting as the Board of  
24 Immigration Appeals under paragraph (2)) and administrative  
25 law judges under the Immigration and Nationality Act, after

1 the hearing transition date or asylum transition date, design-  
2 nated under subsection (c)(1), as the case may be.

3 (B) Not later than 60 days after the date such interim  
4 final rules are established, the Chairman shall appoint at  
5 least 10 administrative law judges who are qualified to be  
6 designated to hear asylum cases under section 208 of the  
7 Immigration and Nationality Act. The Board shall provide  
8 for such special training of these administrative law judges as  
9 it deems appropriate.

10 (c)(1) In order to provide for the orderly transfer of pro-  
11 ceedings from the existing special inquiry system to the ad-  
12 ministrative law judge system, the Board, in consultation  
13 with the Attorney General, shall designate—

14 (A) a “hearing transition date”, to be not later  
15 than 45 days after the date interim final rules of prac-  
16 tice and procedure are established under subsection  
17 (b)(3)(A), and

18 (B) an “asylum transition date”, after the estab-  
19 lishment of interim final rules of practice and procedure  
20 respecting applications for asylum and after the ap-  
21 pointment and designation of administrative law judges,  
22 in accordance with section 3105 of title 5, United  
23 States Code, under subsection (b)(3)(B).

24 (2) During the period before the hearing transition date  
25 or the asylum transition date (in the case of asylum hearings),



1 any proceeding or hearing under the Immigration and Na-  
2 tionality Act which may be conducted by a special inquiry  
3 officer may be conducted by an individual appointed and  
4 qualified as an administrative law judge in accordance with  
5 all the rules and procedures otherwise applicable to a special  
6 inquiry officer's conduct of such proceeding or hearing.

7 (d) Individuals acting as special inquiry officers on the  
8 date of the enactment of this Act and on the hearing transi-  
9 tion date may (without regard to other provisions of law) con-  
10 tinue to conduct proceedings or hearings under the Immigra-  
11 tion and Nationality Act after such transition date during the  
12 period ending two years after the date of the enactment of  
13 this Act.

14 (e)(1) The enactment of this part shall not result in any  
15 loss of rights or powers, interruption of jurisdiction, or preju-  
16 dice to matters pending in the Board of Immigration Appeals  
17 or before special inquiry officers on the day before this Act  
18 takes effect.

19 (2) Under rules established by the United States Immi-  
20 gration Board, with respect to exclusion and deportation  
21 cases pending as of the hearing transition date and applica-  
22 tions for asylum pending as of the asylum transition date, the  
23 United States Immigration Board shall be deemed to be a  
24 continuation of the Board of Immigration Appeals and ad-  
25 ministrative law judges shall be deemed to be a continuation

1 of special inquiry officers for the purposes of effectuating the  
2 continuation of all existing powers, rights, and jurisdiction.

3 (f) In order to implement this section and the amend-  
4 ments made by this part, there are authorized to be appropri-  
5 ated \$20,000,000 for fiscal year 1984.

6 TECHNICAL AND CONFORMING AMENDMENTS

7 SEC. 126. (a)(1) Section 101(a) (8 U.S.C. 1101(a)) is  
8 amended by adding at the end the following new paragraph:

9 “(43) The term ‘administrative law judge’ means such a  
10 judge appointed under section 107.”.

11 (2) Section 101(b) (8 U.S.C. 1101(b)) is amended by  
12 striking out paragraph (4) and redesignating paragraph (5) as  
13 paragraph (4).

14 (b) The first sentence of section 234 (8 U.S.C. 1124) is  
15 amended by striking out “special inquiry officers” and insert-  
16 ing in lieu thereof “administrative law judges”.

17 (c)(1) Subsection (a) of section 235 (8 U.S.C. 1225) is  
18 amended—

19 (A) by striking out “special inquiry officers” in  
20 the first sentence and inserting in lieu thereof “admin-  
21 istrative law judges”,

22 (B) by striking out “, including special inquiry of-  
23 ficers,” in the fourth sentence and inserting in lieu  
24 thereof “and any administrative law judge”,

1 (C) by striking out “, including special inquiry of-  
2 ficers,” in the sixth sentence,

3 (D) by striking out “and special inquiry officers”  
4 in the sixth sentence and inserting in lieu thereof “and  
5 administrative law judges”, and

6 (E) by striking out “special inquiry officer” each  
7 place it appears in the seventh sentence and inserting  
8 in lieu thereof “administrative law judge”.

9 (2) Subsection (c) of such section is amended—

10 (A) by striking out “the special inquiry officer  
11 during the examination before either of such officers”  
12 in the first sentence and inserting in lieu thereof  
13 “during the examination or an administrative law judge  
14 during an exclusion hearing”,

15 (B) by striking out “no further inquiry by a spe-  
16 cial inquiry officer” in the first sentence and inserting  
17 in lieu thereof “no further examination or exclusion  
18 hearing”,

19 (C) by striking out “inquiry or further inquiry” in  
20 the first sentence and inserting in lieu thereof “exami-  
21 nation or hearing”,

22 (D) by striking out “any inquiry or further inquiry  
23 by a special inquiry officer” in the second sentence and  
24 inserting in lieu thereof “any examination or hearing”,  
25 and

1 (E) by striking out “an inquiry before a special in-  
2 quiry officer” in the third sentence and inserting in lieu  
3 thereof “an exclusion hearing before an administrative  
4 law judge”.

5 (d) Sections 106(a)(2), 236, and 242(b) (8 U.S.C.  
6 1105a(a)(2), 1126, 1252(b)) are each amended by striking out  
7 “A” and “a” each place either appears before “special in-  
8 quiry officer” and inserting in lieu thereof “An” and “an”,  
9 respectively.

10 (e)(1) Sections 106(a)(2) and 236 (8 U.S.C. 1105a(a)(2),  
11 1226) are each amended by striking out “special inquiry offi-  
12 cer” and inserting in lieu thereof “administrative law judge”  
13 each place it appears.

14 (2) Subsection (a) of section 236 (8 U.S.C. 1226) is  
15 amended—

16 (A) by amending the first sentence to read as fol-  
17 lows: “An administrative law judge shall conduct pro-  
18 ceedings under this section.”,

19 (B) by striking out “for further inquiry” in the  
20 second sentence and inserting in lieu thereof “for an  
21 exclusion hearing”,

22 (C) by striking out “at the inquiry” in the third  
23 sentence and inserting in lieu thereof “at the hearing”,

24 (D) by striking out the fourth sentence,



1 (E) by striking out “regulations as the Attorney  
2 General shall prescribe” in the fifth sentence and in-  
3 serting in lieu thereof “rules as the United States Im-  
4 migration Board shall establish”, and

5 (F) by striking out “inquiry” in the seventh sen-  
6 tence and inserting in lieu thereof “hearing”.

7 (3) Subsection (b) of such section is amended—

8 (A) by striking out “From a decision” and all that  
9 follows through “Attorney General” in the first sen-  
10 tence and inserting in lieu thereof the following: “From  
11 a decision of an administrative law judge excluding or  
12 admitting an alien, the alien or the immigration officer  
13 in charge at the port where the hearing is held, respec-  
14 tively, may file a timely appeal of the decision with the  
15 United States Immigration Board in accordance with  
16 rules established by the Board”,

17 (B) by striking out “Attorney General” in the  
18 fourth sentence and inserting in lieu thereof “United  
19 States Immigration Board”, and

20 (C) by striking out the third sentence.

21 (4) Subsection (c) of such section is amended by striking  
22 out “to the Attorney General”.

23 (f) Section 242(b) (8 U.S.C. 1252(b)) is amended—

24 (1) by striking out “special inquiry officer” each  
25 place it appears in the first, second, third, and seventh

1 sentences and inserting in lieu thereof "administrative  
2 law judge",

3 (2) by striking out "shall administer oaths" and  
4 all that follows through "Attorney General," in the  
5 first sentence,

6 (3) by striking out "Attorney General shall pre-  
7 scribe" in the second sentence and inserting in lieu  
8 thereof "United States Immigration Board shall estab-  
9 lish",

10 (4) by striking out "In any case" and all that fol-  
11 lows through "an additional immigration officer" in the  
12 fourth sentence and inserting in lieu thereof "An immi-  
13 gration officer" and by striking out "in such case such  
14 additional immigration officer" in that sentence,

15 (5) by striking out the fifth and sixth sentences,

16 (6) by striking out "such regulations" and all that  
17 follows through "shall prescribe" in the seventh sen-  
18 tence and inserting in lieu thereof "rules as are estab-  
19 lished by the United States Immigration Board",

20 (7) by striking out "Such regulations" in the  
21 eighth sentence and inserting in lieu thereof "Such  
22 rules", and

23 (8) by striking out "Attorney General shall be  
24 final" in the tenth sentence and inserting in lieu there-

1 of "administrative law judge shall be final unless re-  
2 versed on appeal".

3 (g) The last sentence of section 273(d) (8 U.S.C.  
4 1323(d)) is amended by striking out "special inquiry officers"  
5 and inserting in lieu thereof "administrative law judges".

6 (h) Section 292 (8 U.S.C. 1362) is amended—

7 (1) by striking out "In" and all that follows  
8 through "proceedings," and inserting in lieu thereof  
9 "In any proceeding or hearing before an administrative  
10 law judge and in any appeal before the United States  
11 Immigration Board from any such proceeding", and

12 (2) by inserting "and at no unreasonable delay"  
13 after "Government".

14 (i) Section 360(c) (8 U.S.C. 1503(c)) is amended—

15 (1) by inserting "(and appeals thereof)" in the first  
16 sentence after "proceedings", and

17 (2) by striking out the second sentence.

18 (j) Any reference in section 203(h) of the Immigration  
19 and Nationality Act, as in effect before March 17, 1980, to a  
20 special inquiry officer shall be deemed to be a reference also  
21 to an administrative law judge under section 101(a)(43) of  
22 such Act.

1                   PART D—ADJUSTMENT OF STATUS

2           LIMITATIONS ON ADJUSTMENT OF NONIMMIGRANTS TO

3           IMMIGRANT STATUS BY OUT-OF-STATUS ALIENS

4           SEC. 131. (a) Section 245(c)(2) (8 U.S.C. 1255(c)(2)) is  
5 amended by inserting after “hereafter continues in or accepts  
6 unauthorized employment prior to filing an application for ad-  
7 justment of status” the following: “or who is not in legal  
8 immigration status on the date of filing the application for  
9 adjustment of status”.

10           (b) The amendment made by subsection (a) shall apply  
11 to applications for adjustment of status pending on the date of  
12 the enactment of this Act.

13           (c) For amendment prohibiting certain nonimmigrant  
14 students and visitors entering under visa waivers from adjust-  
15 ing their status to immigrants, see section 212(b) of this Act.

16           TITLE II—REFORM OF LEGAL IMMIGRATION

17                   PART A—IMMIGRANTS

18                   LABOR CERTIFICATION

19           SEC. 201. (a) Paragraph (14) of section 212(a) (8 U.S.C.  
20 1182) is amended by striking out “(A)” and all that follows  
21 through the end and inserting in lieu thereof the following:  
22 “(A) there are not sufficient qualified workers (or equally  
23 qualified workers in the case of aliens (i) who are members of  
24 the teaching profession, (ii) who have exceptional ability in  
25 the sciences or arts, or (iii) who have doctoral degrees and



1 are seeking to enter the United States to be employed as  
2 researchers at colleges, universities, or other nonprofit educa-  
3 tional or research institutions) available in the United States  
4 in the occupations in which the aliens will be employed; (B)  
5 sufficient workers in the United States could not within a  
6 reasonable period of time be trained for such occupations; and  
7 (C) the employment of aliens in such occupations will not  
8 adversely affect the wages and working conditions of workers  
9 in the United States who are similarly employed. In making  
10 such determinations the Secretary of Labor may use labor  
11 market information with or without reference to the specific  
12 job opportunity for which certification is requested. An alien  
13 on behalf of whom a certification is sought must have an offer  
14 of employment from an employer in the United States. The  
15 exclusion of aliens under this paragraph shall only apply to  
16 preference immigrants described in paragraph (3) or (6) of  
17 section 203(a) and to nonpreference immigrants described in  
18 section 203(a)(7). Decisions of the Secretary of Labor made  
19 pursuant to this paragraph, including the issuance and con-  
20 tent of regulations and the use of labor market information  
21 under this paragraph, shall be reviewable by an appropriate  
22 district court of the United States, but the court shall not set  
23 aside such a decision unless there is compelling evidence that  
24 the Secretary made such decision in an arbitrary and capri-  
25 cious manner;”.

1 (b) The amendment made by subsection (a) shall take  
 2 effect on October 1, 1984. When an immigrant, in possession  
 3 of an unexpired immigrant visa issued before October 1,  
 4 1984, makes application for admission, his admissibility  
 5 under section 212(a)(20) shall be determined under the provi-  
 6 sions of law in effect on the date of the issuance of such visa,  
 7 without regard to the amendment made by subsection (a).

8

## G-4 SPECIAL IMMIGRANTS

9 SEC. 202. (a) Section 101(a)(27) (8 U.S.C. 1101(a)(27))  
 10 is amended by striking out “or” at the end of subparagraph  
 11 (G), by striking out the period at the end of subparagraph (H)  
 12 and inserting in lieu thereof “; or”, and by adding at the end  
 13 the following new subparagraph:

14 “(I) an immigrant who entered the United States  
 15 with the status of a nonimmigrant under paragraph  
 16 (15)(G)(iv) and who—

17 “(i) is the unmarried son or daughter of an  
 18 officer or employee of an international organiza-  
 19 tion described in paragraph (15)(G)(iv), and (I)  
 20 while maintaining the status of a nonimmigrant  
 21 under paragraph (15)(G)(iv) or paragraph (15)(N),  
 22 has resided and been physically present in the  
 23 United States within seven years of the date of  
 24 application for a visa under this subparagraph and  
 25 for a period or periods aggregating at least seven

1 years between the ages of five and 18 years, and  
2 (II) applies for admission under this subparagraph  
3 no later than his twenty-fifth birthday or six  
4 months after the date this subparagraph is en-  
5 acted, whichever is later; or

6 “(ii) is the surviving spouse of a deceased of-  
7 ficer or employee of such an international organi-  
8 zation, and (I) while maintaining the status of a  
9 nonimmigrant under paragraph (15)(G)(iv) or  
10 paragraph (15)(N), has resided in the United  
11 States within seven years of the date of applica-  
12 tion for a visa under this subparagraph and for a  
13 period or periods aggregating at least 15 years  
14 prior to the death of such officer or employee, and  
15 (II) applies for admission under this subparagraph  
16 no later than six months after the date of such  
17 death or six months after the date this subpara-  
18 graph is enacted, whichever is later.”.

19 (b) Section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended  
20 by striking out “or” at the end of subparagraph (L), by strik-  
21 ing out the period at the end of subparagraph (M) and insert-  
22 ing in lieu thereof “; or”, and by adding at the end the fol-  
23 lowing new subparagraph:

1           “(N)(i) the parent of an alien accorded the status  
2           of a special immigrant under paragraph (27)(I)(i), but  
3           only if and while the alien is a child, or

4           “(ii) a child of such parent or of an alien accorded  
5           the status of a special immigrant under paragraph  
6           (27)(J)(ii).”.

7           MISCELLANEOUS PROVISIONS

8           SEC. 203. (a) Section 101(b)(1)(D) (8 U.S.C.  
9           1101(b)(1)(D)) is amended by inserting “or natural father”  
10          after “natural mother”.

11          (b) Section 19(2) of Public Law 97-116 is amended by  
12          inserting “(A)” after “because” and by adding before the  
13          semicolon at the end the following: “, or (B) the alien was  
14          entering the United States for the purpose of retirement,  
15          would not seek gainful employment in the United States, had  
16          purchased property in the United States before such date,  
17          and had demonstrated the ability for self-support while in re-  
18          tirement”.

19          (c) In the case of an alien—

20                  (1) who is in the United States on October 1,  
21          1982,

22                  (2) who, as of such date—

23                          (A) has had a petition approved for classifica-  
24                          tion under section 203(a)(3) or (6) of the Immigra-  
25                          tion and Nationality Act, and



1           (B) has been issued a labor certification  
2           under section 212(a)(14) of such Act with respect  
3           to employment for an employer,  
4           (3) who intends to remain in the United States for  
5           the purpose of performing such employment, and  
6           (4) with respect to whom the Attorney General  
7           estimates that an immigrant visa will become available  
8           before October 1, 1984,  
9           the Attorney General may provide that, notwithstanding any  
10          provision of section 214 of the Immigration and Nationality  
11          Act, the alien may be classified as a nonimmigrant under  
12          section 101(a)(15)(H)(ii) of such Act with respect to such em-  
13          ployment until October 1, 1984, or, if earlier, one month  
14          after the date the alien's immigrant visa becomes available.  
15          For purposes of applying section 245 of such Act to an alien  
16          classified as a nonimmigrant under this subsection, the alien  
17          shall be considered to have been inspected and admitted into  
18          the United States and subsection (c)(2) of that section shall  
19          not apply.

20                                   PART B—NONIMMIGRANTS

21                                   H-2 WORKERS

22          SEC. 211. (a) Paragraph (15)(H) of section 101(a) (8  
23          U.S.C. 1101(a)) is amended by striking out "to perform tem-  
24          porary services or labor, if unemployed persons capable of  
25          performing such service or labor cannot be found in this

1 country” in clause (ii) and inserting in lieu thereof “(a) to  
2 perform agricultural labor or services, as defined by the Sec-  
3 retary of Labor in regulations and including agricultural labor  
4 defined in section 3121(g) of the Internal Revenue Code of  
5 1954 and agriculture defined in section 3(f) of the Fair Labor  
6 Standards Act of 1938, of a temporary or seasonal nature, or  
7 (b) to perform other temporary services or labor”.

8 (b) Section 214 (8 U.S.C. 1184) is amended—

9 (1) by adding at the end of subsection (a) the fol-  
10 lowing new sentences:

11 “An alien may not be admitted to the United States as a  
12 nonimmigrant—

13 “(1) under section 101(a)(15)(H)(ii)(a) for an ag-  
14 gregate period longer than the period (or periods) de-  
15 termined by regulations of the Secretary of Labor, or

16 “(2) under section 101(a)(15)(H)(ii) if the alien  
17 was admitted to the United States as such a nonimmi-  
18 grant within the previous five-year period and the alien  
19 during that period violated a term or condition of such  
20 previous admission.

21 The Attorney General shall provide for such endorsement of  
22 entry and exit documents of nonimmigrants described in sec-  
23 tion 101(a)(15)(H)(ii) as may be necessary to carry out this  
24 section and to provide notice for purposes of section 274A.”,

1           (2) by inserting “(1)” after “(c)” in subsection (c),  
2           and

3           (3) by adding at the end of subsection (c)(1), as so  
4           redesignated, the following:

5           “For purposes of this paragraph the term ‘appropriate agen-  
6           cies of Government’ means the Department of Labor and in-  
7           cludes, with respect to nonimmigrants described in section  
8           101(a)(15)(H)(ii)(a), the Department of Agriculture.

9           “(2)(A)(i) A petition to import an alien as a nonimmi-  
10          grant under section 101(a)(15)(H)(ii)(a) may not be approved  
11          by the Attorney General unless the petitioner has applied to  
12          the Secretary of Labor for a certification that—

13                 “(I) there are not sufficient workers who are able,  
14                 willing, and qualified and who will be available at the  
15                 time and place needed to perform the labor or services  
16                 involved in the petition, and

17                 “(II) the employment of the alien in such labor or  
18                 services will not adversely affect the wages and work-  
19                 ing conditions of workers in the United States similarly  
20                 employed.

21           “(ii) A petition to import an alien as a nonimmigrant  
22          under section 101(a)(15)(H)(ii)(b) may not be approved by the  
23          Attorney General unless the petitioner has applied to the  
24          Secretary of Labor for a certification that—

1           “(I) there are not sufficient qualified workers  
2           available in the United States to perform the labor or  
3           services involved in the petition, and

4           “(II) the employment of the alien in such labor or  
5           services will not adversely affect the wages and work-  
6           ing conditions of workers in the United States similarly  
7           employed.

8           “(iii) The Secretary of Labor may require by regulation,  
9           as a condition of issuing the certification, the payment of a  
10          fee to recover the reasonable costs of processing applications  
11          for certification.

12          “(B) The Secretary of Labor may not issue a certifica-  
13          tion under subparagraph (A)—

14               “(i) if there is a strike or lockout in the course of  
15               a labor dispute which, under the regulations, precludes  
16               such certification, or

17               “(ii) with respect to an employer if the employer  
18               during the previous two-year period employed nonim-  
19               migrant aliens admitted to the United States under  
20               section 101(a)(15)(H)(ii) and the Secretary of Labor has  
21               determined, after notice and opportunity for a hearing,  
22               that the employer at any time during that period sub-  
23               stantially violated a material term or condition of the  
24               labor certification with respect to the employment of  
25               domestic or nonimmigrant workers.



1 No employer may be denied certification under clause (ii) for  
2 more than three years for any violation described in such  
3 clause.

4 “(3)(A) In the case of an application for a labor certifica-  
5 tion for a nonimmigrant described in section  
6 101(a)(15)(H)(ii)(a)—

7 “(i) the Secretary of Labor may not require that  
8 the application be filed more than 50 days before the  
9 first date the employer requires the labor or services of  
10 the alien;

11 “(ii) the employer shall be notified in writing  
12 within seven days of the date of filing if the application  
13 does not meet the standards (other than that described  
14 in paragraph (2)(A)(i)(I)) for approval and if it does not,  
15 such notice shall include the reasons therefor and  
16 permit the employer an opportunity to resubmit  
17 promptly a modified application for approval; and

18 “(iii) the Secretary of Labor shall make, not later  
19 than 20 days before the date such labor or services are  
20 first required to be performed, the certification de-  
21 scribed in paragraph (2)(A)(i) if the employer has com-  
22 plied with the criteria for certification, including crite-  
23 ria for the recruitment of eligible individuals as pre-  
24 scribed by the Secretary, and if the employer does not  
25 actually have, or has not been provided with referrals

1 of, qualified eligible individuals who have indicated  
2 their availability to perform such labor or services on  
3 the terms and conditions of a job offer which meets the  
4 requirements of the Secretary, except that the terms of  
5 such a labor certification remain effective only if the  
6 employer continues to accept for employment, until the  
7 date the aliens depart for work with the employer,  
8 qualified eligible individuals who apply or are referred  
9 to the employer.

10 “(B) A petition to import an alien as a nonimmigrant  
11 described in section 101(a)(15)(H)(ii)(a), and an application  
12 for a labor certification with respect to such an alien, may be  
13 filed by an association representing agricultural producers  
14 which use agricultural labor or services. The filing of such a  
15 petition or application on a member’s behalf does not relieve  
16 the member of any liability for representations made in such  
17 petition or application.

18 “(C)(i) The Secretary of Labor shall provide for an ex-  
19 pedited procedure for the review of a denial of certification  
20 under paragraph (2)(A)(i).

21 “(ii) The Secretary of Labor shall expeditiously, but in  
22 no case later than 72 hours after the time a new determina-  
23 tion is requested, make a new determination on the request  
24 for certification in the case of importing a nonimmigrant de-  
25 scribed in section 101(a)(15)(H)(ii)(a) if able, willing, and

1 qualified eligible individuals are not actually available at the  
2 time such labor or services are required and a certification  
3 was denied in whole or in part because of the availability of  
4 qualified eligible individuals. If the employer asserts that any  
5 eligible individuals who have been referred are not able, will-  
6 ing or qualified, the burden of proof is on the employer to  
7 establish that the individuals referred are not able, willing, or  
8 qualified because of employment-related reasons as shown by  
9 their job performance.

10 “(D) For purposes of this paragraph, the term ‘eligible  
11 individual’ means, with respect to employment, an individual  
12 who is not an unauthorized alien (as defined in section  
13 274A(a)(4)) with respect to that employment.

14 “(4) The Secretary of Labor, in consultation with the  
15 Attorney General and the Secretary of Agriculture, shall an-  
16 nually report to the Congress on the certifications provided  
17 under this subsection, the impact of aliens admitted pursuant  
18 to such certifications on labor conditions in the United States,  
19 and on compliance of employers and nonimmigrants with the  
20 terms and conditions of such nonimmigrants’ admission to the  
21 United States.

22 “(5) There are authorized to be appropriated for each  
23 fiscal year, beginning with fiscal year 1984, \$10,000,000 for  
24 the purposes (A) of recruiting domestic workers for tempo-  
25 rary labor and services which might otherwise be performed

1 by nonimmigrants described in section 101(a)(15)(H)(ii), and  
2 (B) of monitoring terms and conditions under which such non-  
3 immigrants (and domestic workers employed by the same em-  
4 ployers) are employed in the United States. The Secretary of  
5 Labor is authorized to take such actions, including imposing  
6 appropriate penalties and seeking appropriate injunctive relief  
7 and specific performance of contractual obligations, as may  
8 be necessary to assure employer compliance with terms and  
9 conditions of employment under this subsection.

10 “(6) There are authorized to be appropriated for each  
11 fiscal year, beginning with fiscal year 1984, such sums as  
12 may be necessary for the purpose of enabling the Secretary of  
13 Labor to make determinations and certifications under this  
14 subsection and under section 212(a)(14).”.

15 (c) The amendments made by this section apply to peti-  
16 tions and applications filed under section 214(c) of the Immi-  
17 gration and Nationality Act on or after the first day of the  
18 seventh month beginning after the date of the enactment of  
19 this Act (hereinafter in this section referred to as the “effec-  
20 tive date”).

21 (d) Notwithstanding any other provision of law, final  
22 regulations implementing the amendments made by this sec-  
23 tion shall first be issued, on an interim or other basis, not  
24 later than the effective date.



1       (e) The Secretary of Labor, in consultation with the At-  
2       torney General and the Secretary of Agriculture, shall report  
3       to the Congress not later than 18 months after the effective  
4       date on recommendations for improvements in the temporary  
5       alien worker program amended by this section, including rec-  
6       ommendations—

7               (1) improving the timeliness of decisions regarding  
8       admission of temporary foreign workers under the pro-  
9       gram,

10              (2) removing any current economic disincentives  
11       to hiring United States citizens or permanent resident  
12       aliens where temporary foreign workers have been re-  
13       quested, and

14              (3) improving the cooperation among government  
15       agencies, employers, employer associations, workers,  
16       unions, and other worker associations to end the de-  
17       pendence of any industry on a constant supply of tem-  
18       porary foreign workers.

19       (f) It is the sense of Congress that the President should  
20       establish an advisory commission which shall consult with the  
21       Government of Mexico and advise the Attorney General re-  
22       garding the operation of the alien temporary worker program  
23       established under section 214(c) of the Immigration and Na-  
24       tionality Act.

## STUDENTS

1

2 SEC. 212. (a) Section 212(e) (8 U.S.C. 1182(e)) is  
3 amended—

4 (1) by striking out “(e) No person” and inserting  
5 in lieu thereof “(e)(1) No person (A)”,

6 (2) by inserting after “training,” the following:  
7 “or (B) except as provided in paragraph (2), admitted  
8 under subparagraph (F) or (M) of section 101(a)(15) or  
9 acquiring such status after admission,”

10 (3) by striking out “clause (iii)” in the second pro-  
11 viso and inserting in lieu thereof “clause (A)(iii) or  
12 clause (B) of the first sentence”,

13 (4) by striking out “: *Provided*, That upon” and  
14 inserting in lieu thereof “. Upon”,

15 (5) by striking out “: *And provided further*, That  
16 except” and inserting in lieu thereof “. Except”, and

17 (6) by adding at the end the following:  
18 “The Attorney General may waive such two-year foreign  
19 residence requirement in the case of an alien described in  
20 clause (B) of the first sentence who is an immediate relative  
21 (as specified in section 201(b)).

22 “(2) The Attorney General, in the case of an alien de-  
23 scribed in clause (B) of the first sentence of paragraph (1)  
24 who has the status of a nonimmigrant under section  
25 101(a)(15)(F), may waive the two-year foreign residence re-

1 quirement of paragraph (1) if the Attorney General deter-  
2 mines that the waiver is in the public interest and that—

3 “(A) the alien—

4 “(i) has obtained a degree in a natural sci-  
5 ence, mathematics, computer science, or an engi-  
6 neering field from a college or university in the  
7 United States,

8 “(ii) is applying for a visa as an immigrant  
9 described in paragraph (3) or (6) of section 203(a),

10 “(iii)(I) has been offered a position on the  
11 faculty (including as a researcher) of a college or  
12 university in the United States in the field in  
13 which he obtained the degree, or

14 “(II) has been offered a research or technical  
15 position by a employer in the field in which he ob-  
16 tained the degree,

17 “(iv) has received a certification under sec-  
18 tion 212(a)(14) with respect to such position, and

19 “(v) has applied for a waiver under this para-  
20 graph before September 30, 1989; or

21 “(B) the alien—

22 “(i) has obtained a degree in a natural sci-  
23 ence, mathematics, computer science, or in a field  
24 of engineering or business,

1           “(ii) is applying for a visa as a nonimmigrant  
2           described in section 101(a)(15)(H)(iii),

3           “(iii) will receive no more than three years of  
4           training by a firm, corporation, or other legal  
5           entity in the United States, which training will  
6           enable the alien to return to the country of his na-  
7           tionality or last residence and be employed there  
8           as a manager by the same firm, corporation, or  
9           other legal entity, or a branch, subsidiary, or affil-  
10          iate thereof, and

11          “(iv) furnishes the Attorney General each  
12          year with an affidavit (in such form as the Attor-  
13          ney General shall prescribe) that attests that the  
14          alien (I) is in good standing in the training pro-  
15          gram in which the alien is participating, and (II)  
16          will return to the country of his nationality or last  
17          residence upon completion of the training pro-  
18          gram.”.

19          (b) Section 245(c) (8 U.S.C. 1255(c)) is amended by  
20          striking out “or” before “(3)” and by inserting before the  
21          period at the end the following: “, or (4) an alien (other than  
22          an immediate relative specified in section 201(b) or an alien  
23          who has received a waiver under section 212(e)(2)(A)) who  
24          entered the United States classified as a nonimmigrant under  
25          subparagraph (F) or (M) of section 101(a)(15) or who was



1 admitted as a nonimmigrant visitor without a visa under sub-  
2 section (l) or (m) of section 212.”.

3 (c) Section 244(b) (8 U.S.C. 1254(b)) is amended—

4 (1) by striking out “(b)” and inserting in lieu  
5 thereof “(b)(1)”, and

6 (2) by adding at the end the following:

7 “(2) In determining the period of continuous physical  
8 presence in the United States under subsection (a), there  
9 shall not be included any period in which the alien was in the  
10 United States as—

11 “(A) a nonimmigrant described in subparagraph  
12 (F) or (M) of section 101(a)(15), or

13 “(B) a nonimmigrant described in section  
14 101(a)(15)(H)(iii), pursuant to a waiver under section  
15 212(e)(2)(B).”.

16 (d)(1) The amendments made by subsection (a) apply to  
17 aliens admitted to the United States as a nonimmigrant de-  
18 scribed in subparagraph (F) or (M) of section 101(a)(15) of the  
19 Immigration and Nationality Act after the date of the enact-  
20 ment of this Act or who otherwise acquire such status after  
21 such date.

22 (2) The amendments made by subsection (b) apply to  
23 aliens without regard to the date the aliens enter the United  
24 States.

1       (3) The amendments made by subsection (c) apply to  
2 periods occurring on or after the date of the enactment of this  
3 Act and shall not have the effect of excluding (in the determi-  
4 nation of a period of continuous physical presence in the  
5 United States) any period before the date of the enactment of  
6 this Act.

7                   VISA WAIVER FOR CERTAIN VISITORS

8       SEC. 213. (a) Section 212 (8 U.S.C. 1182) is amended  
9 by adding at the end thereof the following new subsections:

10       “(l)(1) The Attorney General and the Secretary of State  
11 are authorized to establish a pilot program (hereinafter in this  
12 subsection referred to as the ‘program’) under which the re-  
13 quirement of paragraph (26)(B) of subsection (a) may be  
14 waived by the Attorney General and the Secretary of State,  
15 acting jointly and in accordance with this subsection, in the  
16 case of an alien who—

17       “(A) is applying for admission during the pilot  
18 program period (as defined in paragraph (5)) as a non-  
19 immigrant visitor (described in section 101(a)(15)(B))  
20 for a period not exceeding 90 days;

21       “(B) is a national of a country which—

22       “(i) extends or agrees to extend reciprocal  
23 privileges to citizens and nationals of the United  
24 States, and

1                   “(ii) is designated as a pilot country under  
2           paragraph (3);

3           “(C) before such admission completes such immi-  
4           gration form as the Attorney General shall establish  
5           under paragraph (2)(C) and executes a waiver of  
6           review and appeal described in paragraph (2)(D);

7           “(D) has a round trip, nonrefundable, nontransfer-  
8           able, open-dated transportation ticket which—

9           “(i) is issued by a carrier which has entered  
10          into an agreement described in paragraph (4), and

11          “(ii) guarantees transport of the alien out of  
12          the United States at the end of the alien’s visit;  
13          and

14          “(E) has been determined not to represent a  
15          threat to the welfare, safety, or security of the United  
16          States;

17          except that no such alien may be admitted without a visa  
18          pursuant to this subsection if the alien failed to comply with  
19          the conditions of any previous admission as a nonimmigrant.

20          “(2)(A) The program may not be put into operation until  
21          the end of the 30-day period beginning on the date that the  
22          Attorney General submits to the Congress a certification that  
23          the screening and monitoring system described in subpara-  
24          graph (B) is operational and that the form described in sub-  
25          paragraph (C) has been produced.

1       “(B) The Attorney General in cooperation with the Sec-  
2       retary of State shall develop and establish an automated data  
3       arrival and departure control system to screen and monitor  
4       the arrival and departure into the United States of nonimmi-  
5       grant visitors receiving a visa waiver under the program.

6       “(C) The Attorney General shall develop a form for use  
7       under the program. Such form shall be consistent and com-  
8       patible with the control system developed under subpara-  
9       graph (B). Such form shall provide for, among other items—

10       “(i) a summary description of the conditions for  
11       excluding nonimmigrant visitors from the United States  
12       under subsection (a) and this subsection,

13       “(ii) a description of the conditions of entry with a  
14       waiver under this subsection, including the limitation of  
15       such entry to 90 days and the consequences of failure  
16       to abide by such conditions, and

17       “(iii) questions for the alien to answer concerning  
18       any previous denial of the alien’s application for a visa.

19       “(D) An alien may not be provided a waiver under this  
20       subsection unless the alien has waived any right (i) to review  
21       or appeal under the Act of an immigration officer’s determi-  
22       nation as to the admissibility of the alien at the port of entry  
23       into the United States or (ii) to contest, other than on the  
24       basis of an application for asylum, any action for deportation  
25       against the alien.



1       “(3)(A) The Attorney General and the Secretary of  
2 State acting jointly may designate up to five countries as  
3 pilot countries for purposes of this subsection.

4       “(B) For the period beginning after the 30-day period  
5 described in paragraph (2)(A) and ending on the last day of  
6 the first fiscal year which begins after such 30-day period, a  
7 country may not be designated as a pilot country unless the  
8 sum of—

9               “(i) the total number of refusals during the fiscal  
10 year ending immediately before such 30-day period of  
11 nonimmigrant visitor visas for nationals of that coun-  
12 try, and

13               “(ii) the total of the number of nationals of that  
14 country who were excluded from admission or with-  
15 drew their application for admission during such fiscal  
16 year as a nonimmigrant visitor,

17 was less than 2.0 percent of the total number of nonimmi-  
18 grant visitor visas for nationals of that country which were  
19 granted or refused during such fiscal year.

20       “(C) For each fiscal year (within the pilot program  
21 period) after the period specified in subparagraph (B)—

22               “(i) in the case of a country which was a pilot  
23 country in the previous fiscal year, a country may not  
24 be designated as a pilot country unless the sum of—

1                   “(I) the total of the number of nationals of  
2                   that country who were excluded from admission  
3                   or withdrew their application for admission during  
4                   such previous fiscal year as a nonimmigrant visi-  
5                   tor, and

6                   “(II) the total number of nationals of that  
7                   country who were admitted as nonimmigrant visi-  
8                   tors during such previous fiscal year and who vio-  
9                   lated the terms of such admission,  
10                  was less than 2.0 percent of the total number of na-  
11                  tionals of that country who applied for admission as  
12                  nonimmigrant visitors during such previous fiscal year,  
13                  or

14                  “(ii) in the case of another country, the country  
15                  may not be designated as a pilot country unless the  
16                  sum of—

17                  “(I) the total number of refusals during the  
18                  previous fiscal year of nonimmigrant visitor visas  
19                  for nationals of that country, and

20                  “(II) the total of the number of nationals of  
21                  that country who were excluded from admission  
22                  or withdrew their application for admission during  
23                  such previous fiscal year as a nonimmigrant visi-  
24                  tor,

1 was less than 2.0 percent of the total number of non-  
2 immigrant visitor visas for nationals of that country  
3 which were granted or refused during such previous  
4 fiscal year.

5 “(4) The agreement referred to in paragraph (1)(D)(i) is  
6 an agreement between a carrier and the Attorney General  
7 under which the carrier agrees, in consideration of the waiver  
8 of the visa requirement with respect to a nonimmigrant visi-  
9 tor under this subsection—

10 “(A) to indemnify the United States against any  
11 costs for the transportation of the alien from the  
12 United States if the visitor is refused admission to the  
13 United States or remains in the United States unlaw-  
14 fully after the 90-day period described in paragraph  
15 (1)(A)(i), and

16 “(B) to submit daily to immigration officers any  
17 immigration forms received with respect to nonimmi-  
18 grant visitors provided a waiver under this subsection.  
19 The Attorney General may terminate such an agreement  
20 with five days’ notice to the carrier for the carrier’s failure to  
21 meet the terms of such agreement.

22 “(5) For purposes of this subsection, the term ‘pilot pro-  
23 gram period’ means the period beginning at the end of the  
24 30-day period referred to in paragraph (2)(A) and ending on

1 the last day of the third fiscal year which begins after such  
2 30-day period.

3 “(6) The Attorney General and the Secretary of State  
4 shall jointly monitor the program and shall report to the Con-  
5 gress not later than two years after the beginning of the pilot  
6 program, and shall include in such report recommendations  
7 respecting extension of the pilot program period and of the  
8 number of countries that may be designated under paragraph  
9 (3)(A).

10 “(m) The requirement of paragraph (26)(B) of subsection  
11 (a) may be waived by the Attorney General, the Secretary of  
12 State, and the Secretary of the Interior, acting jointly, in the  
13 case of an alien applying for admission as a nonimmigrant  
14 visitor for business or pleasure and solely for entry into and  
15 stay on Guam for a period not to exceed 15 days, if the  
16 Attorney General, the Secretary of State, and the Secretary  
17 of the Interior jointly determine that—

18 “(1) the Territory of Guam has developed an ade-  
19 quate arrival and departure control system, and

20 “(2) such a waiver does not present a threat to  
21 the welfare, safety, or security of the United States.”.

22 (b) Section 214(a) (8 U.S.C. 1184(a)) is amended by  
23 adding at the end the following new sentence: “No alien ad-  
24 mitted to the United States without a visa pursuant to sub-  
25 section (l) or (m) of section 212 may be authorized to remain



1 in the United States as a nonimmigrant visitor for a period  
 2 exceeding 90 days or 15 days, respectively, from the date of  
 3 admission.”.

4 (c) For amendment prohibiting nonimmigrant visitors  
 5 entering under visa waivers from adjusting their status to  
 6 immigrants, see section 212(b) of this Act.

7 (d) Section 248 (8 U.S.C. 1258) is amended by striking  
 8 out “and” at the end of paragraph (2), by striking out the  
 9 period at the end of paragraph (3) and inserting in lieu there-  
 10 of “, and” and by adding at the end thereof the following  
 11 new paragraph:

12 “(4) an alien admitted as a nonimmigrant visitor  
 13 without a visa under subsection (l) or (m) of section  
 14 212.”.

### 15 TITLE III—LEGALIZATION

#### 16 LEGALIZATION

17 SEC. 301. (a) Chapter 5 of title II is amended by insert-  
 18 ing after section 245 (8 U.S.C. 1255) the following new sec-  
 19 tion:

20 “ADJUSTMENT OF STATUS OF CERTAIN ENTRANTS  
 21 BEFORE JANUARY 1, 1980, TO THAT OF PERSON AD-

22 MITTED FOR TEMPORARY OR PERMANENT RESIDENCE

23 “SEC. 245A. (a) The Attorney General may, in his dis-  
 24 cretion and under such regulations as he shall prescribe,

1 adjust the status of an alien to that of an alien lawfully ad-  
2 mitted for permanent residence if—

3 “(1) the alien applies for such adjustment during  
4 the one-year period beginning October 1, 1983,

5 “(2)(A) the alien (other than an alien who entered  
6 as a nonimmigrant) establishes that he entered the  
7 United States prior to January 1, 1977, and has re-  
8 sided continuously in the United States in an unlawful  
9 status since January 1, 1977, or

10 “(B) the alien entered the United States as a non-  
11 immigrant before January 1, 1977, the alien’s period  
12 of authorized stay as a nonimmigrant expired before  
13 January 1, 1977, through the passage of time or the  
14 alien’s unlawful status was known to the Government  
15 as of January 1, 1977, and the alien has resided con-  
16 tinuously in the United States in an unlawful status  
17 since January 1, 1977; and

18 “(C) in the case of an alien who at any time was  
19 a nonimmigrant exchange alien (as defined in section  
20 101(a)(15)(J)), the alien was not subject to the two-  
21 year foreign residence requirement of section 212(e) or  
22 has fulfilled that requirement or received a waiver  
23 thereof; and

24 “(3) the alien—

1                   “(A) is admissible to the United States as an  
2           immigrant, except as otherwise provided under  
3           subsection (c)(3),

4                   “(B) has not been convicted of any felony or  
5           of three or more misdemeanors committed in the  
6           United States, and

7                   “(C) has not assisted in the persecution of  
8           any person or persons on account of race, reli-  
9           gion, nationality, membership in a particular  
10          social group, or political opinion.

11          “(b)(1) The Attorney General, in his discretion and  
12   under such regulations as he shall prescribe, may adjust the  
13   status of an alien to that of an alien lawfully admitted for  
14   temporary residence if—

15                  “(A) the alien applies for such adjustment during  
16          the one-year period beginning October 1, 1983;

17                  “(B)(i)(I) the alien (other than an alien who en-  
18          tered as a nonimmigrant) establishes that he entered  
19          the United States prior to January 1, 1980, and has  
20          resided continuously in the United States in an unlaw-  
21          ful status since January 1, 1980, or

22                  “(II) the alien entered the United States as a  
23          nonimmigrant before January 1, 1980, the alien’s  
24          period of authorized stay as a nonimmigrant expired  
25          before January 1, 1980, through the passage of time

1 or the alien's unlawful status was known to the Gov-  
2 ernment as of January 1, 1980, and the alien has re-  
3 sided continuously in the United States in an unlawful  
4 status since January 1, 1980; and

5 “(III) in the case of an alien who at any time was  
6 a nonimmigrant exchange alien (as defined in section  
7 101(a)(15)(J)), the alien was not subject to the two-  
8 year foreign residence requirement of section 212(e) or  
9 has fulfilled that requirement or received a waiver  
10 thereof; or

11 “(ii) the alien is—

12 “(I) a national of Cuba who arrived in the  
13 United States and presented himself for inspection  
14 after April 20, 1980, and before January 1, 1981,  
15 and who is still physically present in the United  
16 States;

17 “(II) a national of Haiti who on December  
18 31, 1980, was the subject of exclusion or deporta-  
19 tion proceedings under section 236 or section 242  
20 of the Immigration and Nationality Act, including  
21 a national of Haiti who on that date was under an  
22 order of exclusion and deportation or under an  
23 order of deportation which had not yet been ex-  
24 ecuted;



1           “(III) a national of Haiti who was paroled  
2           into the United States under section 212(d)(5) of  
3           such Act or was granted voluntary departure  
4           before December 31, 1980, and was physically  
5           present in the United States on that date; or

6           “(IV) a national of Cuba or Haiti who on  
7           December 31, 1980, had an application for  
8           asylum pending with the Immigration and Natu-  
9           ralization Service; and

10          “(C) the alien—

11           “(i) is admissible to the United States as an  
12           immigrant, except as otherwise provided under  
13           subsection (c)(3),

14           “(ii) has not been convicted of any felony or  
15           three or more misdemeanors committed in the  
16           United States, and

17           “(iii) has not assisted in the persecution of  
18           any person or persons on account of race, reli-  
19           gion, nationality, membership in a particular  
20           social group, or political opinion.

21          “(2) In the case of an alien during the period he is  
22          granted lawful temporary resident status under paragraph  
23          (1)—

24           “(A) the Attorney General shall, in accordance  
25          with regulations, permit the alien to return to the

1 United States after such brief and casual trips abroad  
2 as reflect an intention on the part of the alien to adjust  
3 to lawful permanent resident status under paragraph  
4 (3), and

5 “(B) the Attorney General shall grant the alien  
6 authorization to engage in employment in the United  
7 States and provide to that alien an ‘employment au-  
8 thorized’ endorsement or other appropriate work  
9 permit.

10 “(3) The Attorney General, in his discretion and under  
11 such regulations as he may prescribe, may adjust the status  
12 of any alien provided lawful temporary resident status under  
13 paragraph (1) to that of an alien lawfully admitted for perma-  
14 nent residence if the alien—

15 “(A) applies for such adjustment during the six-  
16 month period beginning with the thirty-seventh month  
17 that begins after the date the alien was granted such  
18 temporary resident status;

19 “(B) establishes that he has continuously resided  
20 in the United States since the date the alien was  
21 granted such temporary resident status;

22 “(C)(i) is admissible to the United States as an  
23 immigrant, except as otherwise provided under subsec-  
24 tion (c)(3), and

1           “(ii) has not been convicted of any felony or three  
2       or more misdemeanors committed in the United States;  
3       and

4           “(D) can demonstrate that he either (i) meets the  
5       requirement of paragraph (1) of section 312 (relating to  
6       minimal understanding of ordinary English), or (ii) is  
7       satisfactorily pursuing a course of study (recognized by  
8       the Attorney General) to achieve such an understand-  
9       ing of English.

10       “(4) The Attorney General shall provide for the rescis-  
11      sion of temporary resident status granted an alien under this  
12      subsection—

13           “(A) if it appears to the Attorney General that  
14      the alien was in fact not eligible for such status,

15           “(B) if the alien commits an act that (i) makes the  
16      alien inadmissible to the United States as an immi-  
17      grant, except as otherwise provided under subsection  
18      (c)(3), or (ii) is convicted of any felony or three or more  
19      misdemeanors committed in the United States, or

20           “(C) at the end of the forty-third month beginning  
21      after the date the alien is granted such status, unless  
22      the alien has filed an application for adjustment of such  
23      status pursuant to paragraph (3) and such application  
24      has not been denied.

1       “(c)(1) The Attorney General shall provide that applica-  
2 tions for adjustment of status under subsection (a) and sub-  
3 section (b)(1) may be made to and received, on behalf of the  
4 Attorney General, by qualified voluntary agencies, which  
5 have been designated for such purpose by the Attorney Gen-  
6 eral.

7       “(2) The numerical limitations of sections 201 and 202  
8 shall not apply to the adjustment of aliens to lawful perma-  
9 nent resident status under this section.

10       “(3) The provisions of paragraph (14), (20), (21), (25),  
11 and (32) of section 212(a) shall not be applicable in the deter-  
12 mination of an alien’s admissibility under subsections  
13 (a)(3)(A), (b)(1)(C)(i), (b)(3)(C)(i), and (b)(4)(A)(i), and the At-  
14 torney General, in making such determination, may waive  
15 any other provision of such section other than paragraph (9),  
16 (10), (23) (except for so much of such paragraph as relates to  
17 a single offense of simple possession of 30 grams or less of  
18 marihuana), (27), (28), (29), or (33) with respect to the alien  
19 involved for humanitarian purposes, to assure family unity, or  
20 when it is otherwise in the public interest.

21       “(4) During the six-month period beginning on the date  
22 of the enactment of this section, the Attorney General, in  
23 cooperation with qualified voluntary agencies designated  
24 under paragraph (1), shall broadly disseminate information



1 respecting the benefits which aliens may receive under this  
2 section and the requirements to obtain such benefits.

3 “(5) Notwithstanding any other provision of law, the  
4 Attorney General shall first issue, on an interim or other  
5 basis and before October 1, 1983, such regulations as are  
6 necessary to implement this section on a timely basis.

7 “(6) The Attorney General shall provide that in the case  
8 of an alien who is apprehended before October 1, 1983, and  
9 who can establish a prima facie case of eligibility to have his  
10 status adjusted under subsection (a) or (b)(1) (but for the fact  
11 that he may not apply for such adjustment until October 1,  
12 1983) may not be deported or excluded until he has had a  
13 reasonable opportunity to file an application for such adjust-  
14 ment.

15 “(d)(1) During the period an alien is in lawful temporary  
16 resident status granted under subsection (b)(1) and during the  
17 three-year period beginning on the date an alien is granted  
18 lawful permanent resident status under subsection (a) or  
19 (b)(3), and notwithstanding any other provision of law—

20 “(A) except as provided in paragraph (2), the  
21 alien is not eligible for—

22 “(i) any program of financial assistance fur-  
23 nished under Federal law (whether through grant,  
24 loan, guarantee, or otherwise) on the basis of fi-  
25 nancial need, as such programs are identified by

1 the Attorney General in consultation with other  
2 appropriate heads of the various departments and  
3 agencies of Government,

4 “(ii) medical assistance under a State plan  
5 approved under title XIX of the Social Security  
6 Act, and

7 “(iii) assistance under the Food Stamp Act of  
8 1977, and

9 “(B) a State or political subdivision therein may,  
10 to the extent consistent with subparagraph (A), provide  
11 that the alien is not eligible for the programs of finan-  
12 cial or medical assistance furnished under the law of  
13 that State or political subdivision.

14 “(2) Paragraph (1) shall not apply—

15 “(A) to an alien described in subsection  
16 (b)(1)(B)(ii) (relating to certain Cuban and Haitian en-  
17 trants),

18 “(B) in the case of assistance provided to aliens  
19 who are determined (in accordance with regulations  
20 prescribed by the Attorney General in consultation  
21 with the Secretary of Health and Human Services) to  
22 require such assistance because of age (in the case of  
23 aliens 65 years of age or older), blindness, or disability,  
24 and

1           “(C) in the case of medical assistance provided to  
2       aliens who are determined (in accordance with regula-  
3       tions prescribed by the Attorney General in consulta-  
4       tion with the Secretary of Health and Human Serv-  
5       ices) to require such assistance in the interest of public  
6       health or because of serious illness or injury.

7           “(3) For the purpose of section 501 of the Refugee Edu-  
8       cation Assistance Act of 1980 (Public Law 96-422), assist-  
9       ance shall be continued under such section with respect to an  
10      alien without regard to the alien’s adjustment of status under  
11      this section.

12          “(e) The Attorney General, after consultation with the  
13      Committees on the Judiciary of the House of Representatives  
14      and the Senate and with qualified voluntary agencies desig-  
15      nated pursuant to subsection (c)(1), shall prescribe regulations  
16      establishing a definition of the term ‘resided continuously’, as  
17      used in this section, and for establishing the requirements  
18      necessary to prove eligibility for immigration benefits under  
19      this section. Such regulations may be prescribed to take  
20      effect on an interim basis if the Attorney General determines  
21      that this is necessary in order to implement this section in a  
22      timely manner.

23          “(f) In order to carry out this section (including the  
24      making of arrangements with qualified voluntary agencies  
25      under subsection (c)(1) and the dissemination of information

1 under subsection (c)(3)) there are authorized to be appropri-  
 2 ated \$10,000,000 for fiscal year 1984.”.

3 (b) The table of contents for chapter 5 of title II is  
 4 amended by inserting after the item relating to section 245  
 5 the following new item:

“Sec. 245A. Adjustment of status of certain entrants before January 1, 1980, to  
 that of person admitted for temporary or permanent residence.”.

6 (c) The President shall transmit to Congress, not later  
 7 than 18 months after the date of the enactment of this Act, a  
 8 report on the impact of the enactment of the legalization pro-  
 9 gram described in section 245A of the Immigration and Na-  
 10 tionality Act, including such impact on State and local gov-  
 11 ernments in the different regions of the United States.

12 (d)(1) Public Law 89-732 (approved November 2, 1966)  
 13 is repealed.

14 (2) The repeal made by paragraph (1) shall not apply to  
 15 a native or citizen of Cuba who has been inspected and ad-  
 16 mitted or paroled into the United States before April 21,  
 17 1980.

18 **UPDATING REGISTRY DATE TO JANUARY 1, 1973**

19 **SEC. 302.** (a) Section 249 (8 U.S.C. 1259) is amend-  
 20 ed—

21 (1) by striking out “JUNE 30, 1948” in the head-  
 22 ing and inserting in lieu thereof “JANUARY 1, 1973”,  
 23 and



1 (2) by striking out "June 30, 1948" in paragraph

2 (a) and inserting in lieu thereof "January 1, 1973".

3 (b) The item in the table of contents relating to section

4 249 is amended by striking out—

"June 30, 1948",

5 and inserting in lieu thereof—

"January 1, 1973".

# 6 STATE LEGALIZATION ASSISTANCE

7 SEC. 303. (a) There are authorized to be appropriated to  
8 carry out subsections (b) and (c) of this section such sums as  
9 may be necessary for fiscal year 1984 and for each of the  
10 three succeeding fiscal years.

11 (b)(1) Subject to the amounts provided in advance in ap-  
12 propriation Acts, the Secretary of Health and Human Serv-  
13 ices shall provide reimbursement to each State (as defined in  
14 paragraph (2)(A)) for 100 percent of the costs of programs of  
15 public assistance (as defined in paragraph (2)(B)) provided to  
16 any eligible legalized alien (as defined in paragraph (2)(C)).

17 (2) For purposes of this subsection:

18 (A) The term "State" has the meaning given such  
19 term in section 101(a)(36) of the Immigration and Na-  
20 tionality Act (8 U.S.C. 1101(a)(36)).

21 (B) The term "programs of public assistance"  
22 means programs existing in a State or local jurisdiction  
23 which—

1 (i) provide for cash, medical, or other assist-  
2 ance designed to meet the basic subsistence or  
3 health needs of individuals or required in the in-  
4 terest of public health,

5 (ii) are generally available to needy individ-  
6 uals residing in the State or locality, and

7 (iii) receive funding from units of State or  
8 local government.

9 (C) The term "eligible legalized alien" means—

10 (i) an alien who has been granted permanent  
11 resident status under section 245A(a) of the Im-  
12 migration and Nationality Act, but only until the  
13 end of the three-year period beginning on the date  
14 the alien was granted such status; and

15 (ii) an alien who has been granted temporary  
16 resident status under section 245A(b)(1) of such  
17 Act, but only until—

18 (I) such temporary resident status is  
19 terminated, or

20 (II) if the alien has been subsequently  
21 granted permanent resident status under sec-  
22 tion 245A(b)(3) of such Act, until the end of  
23 the three-year period beginning on the date  
24 such permanent resident status was granted,  
25 whichever is later.

1       (c)(1) Subject to the amounts provided in advance in ap-  
2 propriation Acts and in accordance with this section, the Sec-  
3 retary of Education shall make payments to State education-  
4 al agencies for the purpose of assisting local educational  
5 agencies of that State in providing educational services for  
6 eligible legalized aliens (as defined in paragraph (3)(B)).

7       (2) The amount of the payment to a State educational  
8 agency under this subsection for a fiscal year shall be based  
9 on the number of eligible legalized aliens (as defined in para-  
10 graph (3)(B)) are enrolled in elementary and secondary public  
11 schools under the jurisdiction of each local educational  
12 agency within that State.

13       (3) For purposes of this subsection:

14           (A) The terms "elementary school", "local educa-  
15 tional agency", "secondary school", "State", and  
16 "State educational agency" have the meanings given  
17 such terms under section 198(a) of the Elementary and  
18 Secondary Education Act of 1965.

19           (B) The term "eligible legalized alien" means an  
20 alien who either has been granted permanent resident  
21 status under section 245A(a) of the Immigration and  
22 Nationality Act or has been granted temporary resident  
23 status under section 245A(b)(1) of such Act, but only  
24 until the end of the three-year period beginning on the  
25 date the alien was granted such status.

Mr. MAZZOLI. I also ask unanimous consent to insert certain editorial materials in the record. And without objection, that will be so ordered.

[The document follows:]

[Editorial from the New York Times, Feb. 21, 1983]

#### TIME TO TURN THE ILLEGAL TIDE

Mr. Immigration, they call him in Washington and for good reason. Repeatedly, Peter Rodino, Chairman of the House Judiciary Committee, has been a man ahead of his time. He was instrumental in enacting the 1965 law undoing the odious national origins quota system. In the early 70's, he recognized, long before others, that further reform depended on making it illegal for employers to hire illegal immigrants. Twice, he managed to get the House to enact such sanctions.

But his efforts were repeatedly stymied in the Senate—until last year. With bipartisan support, a balanced bill including employer sanctions passed the Senate overwhelmingly; this time around, it died in the House. Now there's a second chance. The Simpson-Mazzoli reform bill was re-introduced in both houses last week. If it is to succeed, speed is essential and that means the man of the hour is Mr. Immigration.

There's procedural reason for speed. In a season of budget turmoil and storm over Social Security, immigration becomes a discretionary topic, dispensable when, late in a session, time becomes an enemy. That will be all the more true this year as Presidential candidates try to sidestep the complexity and passion of the issue.

There's another reason for speed: need. The reform bill aims to give the country control of its borders. Such control has never been more desirable. The tide of illegal immigrants is high, and rising. No one knows exactly how many stream into the United States. The Immigration Service says it catches a million a year and guesses that a half million more slip past. Other authorities guess more, but accept the Service's guess: that means nearly 500,000 more illegals have made it in just since the Simpson-Mazzoli bill was first introduced.

According to arithmetic, that means a flow of 1,500 a day during the past year. According to logic, the flow must be considerably greater. Economic magnetism has always pulled migrants, legal and illegal, across the border; the pull must now be nearly irresistible.

Our recession notwithstanding, consider economic conditions elsewhere in the hemisphere. Mexico is a leading example. On the day the Simpson-Mazzoli bill was introduced last year, it took 45 pesos to buy a dollar; today it takes 154. Elsewhere in Central and South America, economic distress is compounded by violence and political instability. And what about the rest of the world?

For reasons of vitality, humanity and history, America wants and needs immigrants. What it does not need is such an uncontrollable flood of illegal migrants that it tries public patience and foments a backlash against all newcomers. That's the genuine danger and the Simpson-Mazzoli bill is the bipartisan remedy.

Senator Simpson hopes the Senate will re-enact the bill within weeks. The House could hang back again, waiting. But if it keeps pace—something Chairman Rodino can do much about—the reform bill could be law by summer. Mr. Immigration was a man ahead of his time; now the moment is his.

[Editorial from the Boston Globe, Dec. 29, 1982]

#### THE BEST VERSUS THE GOOD

The immigration bill that died with the adjournment of Congress was always an uneasy compromise.

It represented an effort to reconcile two different aspirations. One was the humanitarian impulse to regularize the legal status of perhaps six million illegal immigrants. The other was the desire to discourage severely any further illegal immigration.

The restrictionists accepted amnesty for the existing illegal immigrants. In return they obtained a provision in the bill making employers criminally liable for hiring aliens who lack proper documents. The reasoning was that if employers feared serious punishment they would refuse to hire illegal aliens. If the aliens could not get work, they would send this word back on the grapevine to relatives and friends in their native country, and soon the flow of illegal immigrants would cease.



This compromise passed overwhelmingly in the Senate, but in the House it began to come unravelled. It was finally abandoned after two nights of stormy debate without being brought to a final vote.

The difficulty was that many businessmen, farmers, and ranchers in Texas and California who hire Mexican immigrants do not want the legal burden of checking the visa and citizenship papers of their low-paid employees. Their opposition weakened support for the compromise among Republicans and conservative Democrats.

At the same time Hispanic-American members and their black allies raise the cry that the bill was discriminatory because it would tend to make it more difficult for persons with Spanish names to find jobs. Employers, it was argued, would hire others rather than take the risk that a Hispanic employee might turn out to be an illegal alien.

The Hispanic bloc which has demonstrated increasing political clout in recent elections also realistically calculated that if it could stall this bill, it might be able under the next liberal Democratic President to get a bill passed that conferred amnesty without the economic penalty clauses.

The bill deserved a better fate. There is no ideal solution to their complex problem. With the country suffering serious unemployment there is no justification for allowing the entry of additional millions of illegal immigrants. Yet the United States would have to erect the equivalent of the Berlin Wall along the Rio Grande to keep out all the Mexican laborers who would like to enter this country. A credible penalty on those who employ illegal aliens is the only solution offering any plausible hope of deterring illegal immigration.

That this deterrent be coupled with an amnesty for those already here makes sense. It would offend the nation's conscience to try to deport millions of people, some of whom have lived here for many years and have American born children. As Rep. Romano L. Mazzoli, the Kentucky Democrat who was the bill's sponsor sadly observed, the search for perfection leads nowhere. On this problem as on others the best is the enemy of the good.

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[Editorial from the Los Angeles Times, Dec. 27, 1982]

#### MAKING A GOOD JOB BETTER

With the withdrawal of the Immigration Reform and Control Act of 1982 from consideration by the House of Representatives, all chance of changing U.S. immigration laws during the 97th Congress was lost. It's now up to the next Congress, which may even be able to improve on the fine work done by the co-authors of the bill, Sen. Alan K. Simpson (R-Wyo.) and Rep. Romano L. Mazzoli (D-Ky.).

Simpson and Mazzoli are the chairmen of the immigration subcommittees in the Senate and House, respectively, and they are expected to retain those posts when the new Congress convenes. Both have indicated that they will reintroduce their bill, which represented almost four years of research into a complicated and emotional issue. Another hopeful sign is the expressed intention of several opponents of the Simpson-Mazzoli bill, including Rep. Edward R. Roybal (D-Los Angeles), to try to improve it the next time around rather than working to obstruct it.

Immigration, especially illegal immigration, has been perceived by the general public as a problem for almost 10 years. But Congress and four different Administrations were unable to change the laws regulating it because there was no consensus on what should be done. The Simpson-Mazzoli bill came closer to enactment than any of the proposals that preceded it because it was a compromise measure that tried to balance restrictionism with humanitarian concern for immigrants living in this country illegally. Even its authors conceded that it was not perfect, but that did not stop members of Congress who wanted to weaken it, or to make it tougher, from delaying the bill until it became impossible for Congress to enact it before adjournment.

Now that Simpson and Mazzoli will have a chance to refine their bill even further, they should make several changes that could help it win enactment next year.

They should include budget appropriations to pay for the many reforms envisioned by the act. The most effective criticism of the Simpson-Mazzoli bill, in our view, was that it included no money for the Federal agencies that would have been charged with carrying out its mandates, and no financial assistance for the local governments that might have been affected by them. While it established sanctions against employers who hired illegal immigrants, for example, it included no money to pay for a counterfeit-proof Social Security card that would make it easier to enforce such sanctions in a non-discriminatory fashion. And, while it called for more

effective border control, it provided no more money for the overworked U.S. Border Patrol and its parent body, the U.S. Immigration and Naturalization Service.

The next version of the Simpson-Mazzoli bill should include a simpler and more generous legalization program for illegal immigrants willing to come out of hiding. The 1982 bill had a somewhat complicated amnesty program, with a legalization date of 1977 for some immigrants and 1980 for others. It would be easier to have one comprehensive program covering all illegal immigrants, with a single legalization date—preferably 1980.

The Simpson-Mazzoli bill sought also to limit legal immigration to this country. In next year's bill, some effort must be made to maintain some of the more generous features of current U.S. immigration law, particularly provisions that permit family reunification. Some account must also be taken of the traditionally close ties between the United States and its two closest neighbors, Canada and Mexico, by allowing higher levels of legal immigration from both countries.

Congress should be careful that, in its zeal to control illegal immigration, it does not enact laws that would limit the civil rights of both U.S. citizens and foreigners. Civil libertarians properly expressed concern over sections of the Simpson-Mazzoli bill that would have given local police more authority to arrest and detain suspected illegal aliens—a responsibility that the courts have long held belongs to Federal agents, where it should stay. There was also significant opposition to provisions in the 1982 bill that would have made it harder for foreigners to seek political asylum in the United States.

Finally, Congress will be remiss if, in enacting domestic reforms to control immigration, it does not take account of the root cause of that phenomenon—economic underdevelopment in the Third World. Though the 97th Congress did not enact immigration reform, it did pass part of the Caribbean basin initiative proposed by President Reagan. That initiative, which is designed to help end political unrest in the Caribbean and Central America by promoting economic development there, could have as much effect in slowing illegal immigration to this country as anything in the Simpson-Mazzoli bill, if its premise is pursued and expanded on. While many immigrants come to this country because they want to become Americans, the majority are lured here by more basic things. Most often they want more jobs and higher wages than can be found in their homelands. In the long run, the most effective way to limit the number of foreigners coming to the United States is to make sure that other countries offer their energetic and ambitious citizens the same kinds of opportunities that this nation has traditionally offered.

As part of a recent series of articles about immigration, Times staff writer Barry Siegel interviewed several prominent historians who made a point that is worth keeping in mind while pondering what the United States should do about future immigration. The historians almost unanimously agreed that, despite the widespread concern about present-day immigration, there is no need to panic. The United States has faced similar influxes in the past, and has invariably come through as a richer, stronger nation. In the end, America changes the immigrants more than they change America.

That view is an argument for the balanced and generous immigration reforms that we would like to see enacted. It is not, however, an excuse for inaction. There are still problems associated with this nation's immigration system—or non-system, considering how easily and often it is circumvented—and these problems must be addressed.

U.S. immigration laws are outdated and complicated. The agency that administers them is badly in need of reorganization and modernization. Above all, too many illegal immigrants are subject to exploitation under the current laws, not just by unscrupulous employers but also by slum landlords, phony immigration counselors and criminals of all sorts. No well-intentioned person could want this system to continue operating as it has for so long.

Despite its imperfections, the Simpson-Mazzoli bill was a sincere effort to address those problems in a humane and balanced way. That is why we supported it, and that is why we urge Congress to try to enact similar legislation when it reconvenes next year.



[Editorial from the San Diego Union, Dec. 23, 1982]

## IMMIGRATION REFORM

The House of Representatives failed the American people in numerous ways during the last session, but the costliest failure perhaps was its refusal to enact the Simpson-Mazzoli immigration reform bill.

House Speaker Thomas P. "Tip" O'Neill bears heavy responsibility for this. Being nothing if not parochial and from Massachusetts, which is far removed from the illegal alien problem, Mr. O'Neill shoved immigration reform aside at the behest of self-serving special interest groups.

The principal opposition came from an incongruous union of three disparate lobbies: Organized labor, which alleged the bill would admit too many aliens to compete with U.S. workers; growers, and other employers who feared the bill would dry up their traditional source of short-term and low-paid labor; and Latinos, who like things the way they are and see possible harm in any immigration reform. One of the most potent opponents was the U.S. Chamber of Commerce, which ignored an obvious national problem of the first magnitude in favor of the narrow interests of its employer members.

Speaker O'Neill said he was "not enamored of the bill," and that was that. Never mind that the Senate passed it by a lopsided majority of 80 to 19. Never mind that it was the first major rewrite of immigration laws in 30 years. Never mind that the Simpson-Mazzoli reform was the product of two years of study by the Select Commission on Immigration and Refugee Policy and two more years of hearings by the House and Senate.

The complex process to enact immigration reform legislation must commence all over again next year. And the delay is likely to compound the difficulties. Some predict any substitute for the intricately balanced compromises in Simpson-Mazzoli will be harsher, more restrictive. Others fear that Simpson-Mazzoli may represent the high-water mark of immigration reform—that opposition will grow stronger and defeat all attempts at changing the status of illegal aliens. Obviously, no reform can be meaningful if it exempts objections of every special interest.

Immigration reform there must be. As Attorney General William French Smith has warned, "We have lost control of our borders," which no sovereign nation can countenance. Moreover, beyond controlling the flow of millions of persons into this country, the 3.5 to 6 million aliens already here must be protected from exploitation. The only way to do this is to bestow legitimacy upon them through amnesty and citizenship as provided by the Simpson-Mazzoli bill. The purpose is simply to bring some order to disordered U.S. immigration, which is likely to become even worse with Latin America's severe economic problems.

Immigration reform is too desperately needed to become hostage to special interest groups in the United States or to official opposition from Mexico that is based on misunderstanding or deliberate misinterpretation.

[Editorial from the Washington Post, Dec. 21, 1982]

## THE LAME-DUCK SESSION . . . WORST OF ALL

Congress walked away from immigration reform in its final days. It was a tough issue, and there were powerful forces at both ends of the political spectrum that refused to compromise. After a few hours of debate, most of it in the middle of the night, House leaders decided that they did not want to devote the necessary time to deal with amendments and discussion, and the bill was taken down. The conventional wisdom is that a serious immigration reform bill will not be considered again for another five years. Why should that be?

There is a consensus in the country that we have lost control of our borders. It is estimated that there are as many as 10 million illegal aliens here already, and the flow from economically troubled areas of the world continues. Some employers profit from this influx of cheap labor; some ethnic political groups are happy to build their constituencies. They want amnesty for those undocumented immigrants who are already here, but they don't want sanctions against employers who knowingly hire illegals.

In August, by a vote of 80 to 19, the Senate passed the Simpson-Mazzoli bill containing provisions for both amnesty and sanctions. The House Judiciary Committee reported the bill, and it was expected that a large majority of House members would have supported it had they had an opportunity to vote. But agreement on both elements of the compromise was essential. In urging his colleagues to support the bill,

Rep. Barney Frank (D-Mass.) put it in practical terms: "It may no longer be the case that love and marriage go together, but amnesty and sanctions sure do."

Opponents of sanctions may have succeeded in sidetracking the bill this month, but they are playing a risky game. They have left 10 million illegal aliens in limbo by not acting on a bill with generous amnesty provisions. If the American economy does not improve quickly, and if unemployment continues to rise, it is possible that public sentiment will turn against the undocumented aliens who are working in this country and that support for amnesty will diminish. By offering no reasonable alternative to employer sanctions—massive economic assistance to all countries from which the illegals are coming is not a practical and immediate answer—they leave themselves open to a charge that they affirmatively favor unlimited, uncontrolled and illegal immigration. There is little support for this position in Congress or in the country.

The Simpson-Mazzoli bill remains a good compromise, devised by thoughtful legislators, supported by the administration and the broad center of experts and policymakers. It was not defeated last weekend, just delayed. It belongs high on the list of matters to be considered by the new Congress and deserves the support of all but those who, for their own reasons, prefer the chaotic status quo.

#### LET'S REMOVE JOB LURE—STEM THE ALIEN TIDE

(By Mike Royko)

It was a question I expected. "Where did your parents or grandparents come from?"

I knew somebody would ask it after I wrote a column supporting a proposed bill aimed at reducing the number of illegal aliens in this country.

The person who asked the question—a lady with a throbbing social conscience—added: "I assume you're of immigrant stock."

The answer was obvious. Of course I'm of immigrant stock. Who isn't?

Only two American groups aren't descended from immigrants: The Indians, who are the only true American natives, and the blacks, who were essentially kidnap victims.

So all the rest of us are here because somebody got on the boat. The only differences are when our ancestors came here and from where—a distinction that's important only if you want to get into the Social Register.

In my case, my father was brought here by his widowed mother when he was a child. My mother was born here of immigrant parents.

I knew what the lady's next question would be:

"Then how can you propose depriving others of the kind of opportunity that your immigrant ancestors had?"

Ah, she thought she had me.

But she didn't, because I'm not proposing that anybody be deprived of the kind of opportunity that my immigrant ancestors had.

They came here legally, at a time when the national policy of this country was to encourage immigration.

This country, with its incredible industrial expansion, needed more people for the factories and mines and mills. It needed them to work farms. But that's not the national policy anymore. We don't need millions of immigrants, most of them unskilled, because the economy can't absorb them.

So I'm in favor of immigrants having the same kind of deal as the earlier ones had—coming here legally, and within a numbers limit set by this country.

I'm also in favor of this country continuing to be humane in granting political asylum to those who are valid political refugees.

But I'm not soft-headed enough to believe that we should let the torrent of illegal immigration go on—not when millions of this country's citizens can't find work, and the cost of social services is already being stretched to the breaking point. Yet, this is what some naive souls believe—that if somebody manages to slip across the border, that should be enough to assure him or her of resident status. Some daffy groups even want illegals to receive full social benefits—including voting rights.

They consider themselves humane and generous and concerned for their fellow man. But are they? If they are that concerned about their fellow man, then why haven't they considered the impact that millions of illegal aliens will have on those who are already at the bottom of the economic ladder?

Most of the illegals come here for one reason: jobs.



They work hard, they work cheap, and they are the kind of employees that many businessmen love—they keep their mouths shut and, out of fear, do exactly what they're told.

That's why many businessmen are delighted by our sieve-like borders. They don't have to build plants in Mexico to find cheap labor, they just wait for the Mexicans to sneak up here.

So they spread the myth that only the illegals are willing to do the dirty and hard jobs; that native-born Americans refuse to take these jobs.

Basically, that's racist propaganda. What it obviously means is that blacks, who have the highest jobless rate, are turning down jobs that illegal immigrants are willing to take.

And that's nonsense. Blacks have been doing the dirty jobs in this country longer than anyone else.

Every immigrant group has had to start at the bottom. The Irish, the Slavs, the Italians have all been in the ditches, the mines and the mills.

But nobody's done the dirty jobs longer, for generation after generation, than the blacks. Think—when was the last time you saw a blond, blue-eyed shoe-shine man?

And they're still willing to take them, if that's all that the job market has to offer. Any time some Chicago plant puts up the for-hire sign, blacks are waiting in line, no matter how much drudgery the job involves.

It's probably true that black employees aren't as putty-like as some terrified illegals. And they shouldn't be. Their ancestors paid their slavery dues.

So by 1982, they have a right to ask a reasonable rate of pay and decent working conditions for a day's labor. But many of the employers who bleat that only illegals will do their dirty work are saying, in effect, that they are unwilling to pay enough to get anybody but an illegal to do it.

So the answer isn't to let millions of illegals pour into this country and take those jobs, but to pay a decent wage and, if necessary, pass the cost on to the customer. In the long run, that's cheaper than supporting an underground population of illegal immigrants.

That's why I'm in favor of a bill pending in Congress that would require everyone in this country to have an official work card. Without it you couldn't get a job. And unless you're here legally, you wouldn't get a job. With the lure of jobs gone, the flow of illegals would stop.

The bill would also grant legal immigrant status to any illegal who came here in 1978 or before. And to most of the Cubans and Haitians who came here in 1980.

That's not exactly hard-hearted. Just try plunking yourself down in almost any other country in the world and asking for a similar deal.

Try it in Mexico. Go there and tell them that you're broke and have few skills, but you'd like to stay there permanently and draw welfare, if need be, and take a job away from a native.

Oh, they might let you stay for a while. But the room where you sleep could have padded walls.

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[Editorial from USA Today, Sept. 29, 1982]

### CONGRESS MUST SOLVE IMMIGRATION MESS NOW

To an unemployed Mexican whose desperate situation has been gravely worsened by his country's economic crisis, the border between Mexico and the United States is a magnet, not a barrier.

And the life that illegal aliens find here, though meager and harsh by American standards, is a big step up from life in Mexico.

Wages here are 15 times higher. Inflation there is running at 100 percent. Unemployment is 25 percent. And the Mexican population is expected to double in 20 years.

So hundreds of thousands of Mexicans sneak into the United States each year, joining an underground of as many as 6 million illegal aliens. They burden social services in local communities. They crowd shrinking job markets, where unscrupulous employers exploit them. And they are presented by native-born Americans and legal immigrants from California to Florida.

Their presence in the United States is mute testimony that the nation's immigration policy is a disaster. This week, Congress has a chance to reform the immigration laws. It must not let that chance slip by.

The proposed Immigration Reform and Control Act of 1982 would grant legal status—in effect, amnesty—to illegal aliens. That is controversial. But the alterna-

tive is worse. The country cannot afford to hire enough border patrol officers to deport them.

As long as there are U.S. jobs for illegal aliens they will come. This bill would, for the first time, impose federal penalties on employers, thereby shutting off those jobs.

It also would require the president to devise a secure form of identification, perhaps an improved Social Security card, so that employers could not claim they did not know a worker was an illegal alien.

The idea of a national identification card naturally conjures up images of a police state. But under this law, nobody would be required to carry a card and police would be prohibited from demanding it.

For ten years the federal government has waded in a backwash of proposed reforms while America's borders have been flooded with waves of illegal immigrants.

This year, the Senate at last passed a workable bill. A similar version now is stalled in the House. Unless it passes before Congress recesses this week, this country might as well surrender the legal control of its borders.

Mexico and other countries are happily offering the United States their tired and their poor. But this nation's ability to fulfill the American dream for immigrants—and for Americans—depends upon an immigration system that works. Our present Congress must fix it now.

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[Editorial from the Los Angeles Times, Sept. 27, 1982]

### LET'S GIVE IT A CHANCE

Time is running short for the House of Representatives to act on the most comprehensive reform of this country's immigration laws that has been attempted in the last 30 years.

Unless the leadership of the House, particularly on the Democratic side, pushes the Immigration Reform and Control Act of 1982 more energetically, the bill could be dead for this session of Congress. The House Judiciary Committee approved the bill last week, and it is now pending before the Rules Committee, which can either bottle it up or pass it to the House floor for a final vote before Congress recesses for the November elections.

If the immigration-reform bill dies, it will have to be reintroduced before the next session of Congress. That would mean a repetition of the long, arduous effort that its co-authors, Sen. Alan K. Simpson (R-Wyo.) and Rep. Romano L. Mazzoli (D-Ky.), have put out to get it this far.

Even worse, it would mean that this country's current immigration system—which is hardly a system at all, considering the slowness with which it works and the ease with which it is circumvented—would continue to operate as it does now for many more months, and possibly years. That is clearly unacceptable, because the present system causes the exploitation of illegal immigrants and breeds contempt for laws that are not enforced.

The Simpson-Mazzoli bill can be criticized on many points. It should provide a more generous amnesty for illegal immigrants who have established themselves in the United States, it should be more specific on setting up a national worker-identity system to help enforce sanctions against employers who hire illegal workers and it should include a reorganization of the U.S. Immigration and Naturalization Service.

But the bill's two authors frankly concede that it is not perfect. They argue that their bill represents a compromise, and that it is the best balanced, most humane reform bill possible at this time. They say that its critics should give it a chance to work, and we agree.

House leaders, especially Speaker Thomas P. (Tip) O'Neill, Jr. (D-Mass.) and Majority Leader Jim Wright (D-Tex.), should push the Simpson-Mazzoli bill to the House floor this week. To delay any more could be fatal.

To have come this close to finally acting on a complex problem that has troubled public opinion for so many years and do nothing would be a dereliction of duty by Congress. If nothing is done now, this country's immigration problems will not go away, but only get worse.



[Editorial from the New York Times, Sept. 24, 1982]

## SHOWING ID AT THE GOLDEN DOORS

There are, in truth, two golden doors to the United States. Anyone who wants to keep the front door open to legal immigration, despite the rising nativist and racist pressures, should like the Simpson-Mazzoli immigration reform bill. So should anyone who wants to close the back door against illegal immigration. That's why the bill, having overwhelmingly passed the Senate, has finally run the gauntlet of the House Judiciary Committee. If the House leadership recognizes how broad a consensus the bill represents, it could come before the whole House next week.

But consensus notwithstanding, critics right and left are rushing to launch torpedoes, notably because they are offended by the bill's key provision: employer sanctions. That is, employers could no longer innocently hire illegal aliens. They would have to check the identification of prospective workers, thus discouraging the illegal flow. To the critics, identification is a dirty word; they insist that as a cure, it is worse than the disease.

The argument may have appeal to libertarians on the right and to civil libertarians on the left, but it remains romantic. The Simpson-Mazzoli bill offers the opportunity of a generation and ought not to be obstructed by such yearnings for a simpler past. Identification is a fact of modern American life. The test is how to use it wisely.

The American Civil Liberties Union opposes use of Social Security or other Government cards to identify legal immigrants applying for work: that would, in effect, create an "employment passport." The libertarian right expresses similar horror. Our colleague, William Safire, writes of "this generation's longest step toward totalitarianism." What's all the shouting about? The United States of the 80's is a time of Visa, MasterCard and other forms of identification. Americans carry it not because of orders from some Big Brother but because they want and need it.

Applying for a job? You should want to give your Social Security number, so payroll taxes will be properly credited to your account. Hate identification in principle? Probably every one of the critics has a driver's license, and produces it without qualm when cashing a check. And if not, 41 states already provide special cards for people without drivers' licenses who want ID.

The only practical right the Simpson-Mazzoli bill would curtail is the right to use counterfeit identification. In exchange, the nation would greatly strengthen its capacity to control the borders and let in legal applicants, patiently waiting in line, instead of gate-crashers. To us, the medicine's side effects are slight compared with the disease.

Ah, but that's not what we're afraid of, the critics say. Once you create national identification, like the forgery-resistant Social Security card announced just yesterday, you invite increasing intrusiveness. The police, for instance, will want to use it to look for heinous criminals—and then not-so-heinous criminals. This is one camel's nose that must be kept out from under the tent.

That is always a danger with a camel, but what a sensible society does with a camel is ride it. One does not ban telephones because they can be tapped. The Simpson-Mazzoli bill provides a fair, humane and effective way to control immigration. If the 97th Congress approves, it will finally have done something to be remembered for.

[Editorial from the Washington Post, Sept. 14, 1982]

## SAVE SIMPSON-MAZZOLI

It has been clear for some time that legislation is needed to reform the immigration laws. This year it appeared that Congress would finally come to terms with this emotional and controversial subject. Interest groups from labor unions and the ACLU to agricultural conglomerates and zero population growth people have a stake in how the law is written. Dozens of ethnic groups and tens of thousands of families have ideas on who should be given preference. Even foreign governments have something to say about how we handle refugees and whether their brightest young people who come here to study should eventually return home. It is not a subject on which compromise is easy, but compromise has been accomplished.

The Simpson-Mazzoli bill, which was passed by the Senate in July, appeared to contain something for everyone. Employer sanctions would be imposed on those who hired illegal aliens, but such aliens already in the country—we can only guess at their number, but there are probably 9 to 10 million—would be given amnesty. For

the first time a numerical limit would be placed on legal immigrants, with preference given to family members and skilled workers. But this number would not include refugees, who could be admitted in any number in the event of an international crisis, for example, as long as the president and Congress agreed.

When the bill was considered by the Senate last month, not everyone was happy with every aspect of the proposal, but a large majority believed that the compromises that had been made were fair. Amendments offered by Sen. Huddleston to restrict the total number of immigrants and by Sen. Kennedy to increase the total were both defeated. Last week, however, the House Judiciary Committee marked up the bill and adopted a number of the liberal amendments that the Senate had rejected. This is where the risk comes in. There is now a great danger that the compromise will begin to unravel—a scenario often witnessed during the closing days of a congressional session. Opponents may try to keep the bill from the floor. The compromises on amnesty and refugees, which conservatives never liked anyway, may come apart. Years of work and careful balancing may be lost in the rush to adjourn.

As the birthrate falls in this country, immigration accounts for a larger share of total population growth every year. These are big numbers, and they affect our economy as well as the social fabric of the country. If the bill fails, and legislators have to go back to the drawing board, valuable time and momentum will be lost. This should not be allowed to happen. It is the responsibility of the House leadership to count votes carefully and to be flexible in forging and preserving compromise so that this important legislation can be enacted this year.

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[Editorial from the Boston Globe, Aug. 27, 1982]

#### THE IMMIGRATION CONTROL ACT

The Immigration Reform and Control Act that passed the U.S. Senate last week and is scheduled for House debate in mid-September is aimed at "getting control over our borders," across which an estimated half-million illegal aliens come each year in search of jobs.

At present that task is far beyond the capabilities of the Border Patrol, which has only one-tenth of its 2,300 agents on duty at any given moment. With domestic unemployment just short of 10 percent, and with social unrest and economic crisis affecting one country after another in the Caribbean and Central America, a revision of the immigration law is overdue.

The reform act, coauthored by Sen. Alan K. Simpson, (R-Wyo.) and Rep. Roman L. Mazzoli (D-Ken.), contains three essential features. It calls for development of a national system for identifying workers; makes employers legally responsible for checking workers IDs, with stiff fines for knowing violators; and provides amnesty for undocumented workers who are already in this country, a figure estimated at between 3 and 6 million. There are also numerous changes of secondary importance, for example revisions in certain categories of immigrants allowed special treatment, and changes in regulations regarding temporary agricultural workers. Procedures for exclusion and deportation and for claiming refugee status are also streamlined.

A bill of this nature is bound to be controversial in a nation which still identifies in good part with the century-old message of the Statue of Liberty, but which also faces the practical necessity of adjusting to changes in the world economy and in demographic trends. Many features of the bill have drawn mixed reactions. Still, the 81-18 Senate vote, with liberals and conservatives distributed on both sides, indicates a consensus that, details aside, the bill is on the right track.

An odd alliance between the U.S. Chamber of Commerce and some Hispanic groups has opposed the bill, the former to avoid responsibility for implementation, and the latter out of fear of discrimination. But there is simply no way to stem the flow of undocumented job seekers unless employers are held responsible for checking the IDs of job applicants. Under the bill the redtape is minimal. And as for fomenting discrimination, a sound identification system will have the opposite effect: Legal immigrants will be more protected from discrimination than at present because they will have evidence of their legal status.

The Administration has generally supported the bill, but, according to one report yesterday, may change course suddenly and attack the concept of an identification system on the grounds that it will lead to abuses "typical of totalitarian societies."

The Administration can't have it both ways. If controls on immigration are wanted, there must be a national ID system. How else can illegal aliens be distinguished from legal immigrants and citizens?



Indeed, an adaptable system exists in the Social Security card, which is widely used as an identifier. Social Security cards are now managed laxly, with cards easily forgeable and seldom even presented when a Social Security number is required. But if the cards were upgraded, printed on special paper and treated with the respect given any document such as a license or credit card, they would serve the purpose.

The notion that, simply because there is a national identifier system, citizens will be tyrannized by "the authorities" with random demands for their "papers" is a canard. If a card system were used, there would be no need to carry or present it, except when applying for a job.

As Sen. Simpson notes, "There is no slippery slope toward loss of liberties, only a long staircase along with each step downward must first be tolerated . . ."

It is part of the human condition to be somewhere on that staircase in any event. U.S. citizens stand near the top. With a national identifier system, we will have moved scarcely, if at all. It would still be a long, optional descent to any dungeons.

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[Editorial from the New York Times, Aug. 19, 1982]

### IMMIGRANTS, HISTORY AND THE HOUSE

Will the 97th Congress be remembered for historic legislation, or merely house-keeping? It has spent much of its time so far in heated battle over the budget, spending cuts and a tax increase, important but largely year-to-year concerns. Now that the Senate has overwhelmingly passed the big Simpson-Mazzoli immigration reform bill, the House has a chance to do something worth remembering years from now. But that means it must act quickly; there are fewer than 20 legislative days remaining before adjournment.

What's historic about the bill is the principle. As the Rev. Theodore Hesburgh's immigration study commission said last year, the way to keep the front door open is to close the back door. The nation wants and needs to unite families, to bring in people with valued skills, to infuse the renewing spirit of immigrant ambition and energy. But meanwhile, a continued flood of illegal immigration taxes national patience to the point that some people are ready to slam all the doors shut.

To its lasting credit, the Senate refused to reduce the amount of legal immigration and endorsed a provision to keep illegal immigrants from coming in the back door. The best way to do that is to take the pie off the kitchen table—by eliminating the economic incentive to sneak into the country for jobs that pay a fortune compared with what it's possible to earn back home.

Thus the Simpson-Mazzoli bill calls for "employer sanctions," forbidding employers for the first time to hire illegals. While that is a landmark, the Senate bill is far from perfect. It creates two problems in particular for the House to address. One is that Hispanic-American organizations fear employer sanctions. They suspect that many employers will refuse to hire anyone who even looks Hispanic, legal or not, rather than risk tangling with new law. It is a reasonable fear, which Senator Kennedy tried to meet without success in the Senate.

What would be the harm of having an agency like the General Accounting Office or the Equal Employment Opportunity Commission investigate possible discriminatory effects and make periodic reports? Some such procedure would not eliminate Hispanic concerns, but simply respect should make the House glad to allay them.

The second area for improvement is amnesty for illegal aliens who have been here for years, living under a cloud and vulnerable to exploitation. A one-time amnesty is the humane way to clear the decks, but the version finally patched together by the Senate is an administrative monstrosity. It would create three different categories of illegals, each accorded a different status and each given different rights to public benefits. The House would serve both clarity and charity by insisting on something simpler.

With the session draining away so fast, can the House act in time? The fate of immigration reform now depends on Peter Rodino, the canny New Jersey Democrat who heads the House Judiciary Committee. He's the same Peter Rodino who pushed employer sanctions through the House twice, in 1972 and 1973, only to see them die in the Senate. This time the Senate is committed first. History waits.

## . . . AND U.S. IMMIGRATION TROUBLES

The crisis in the Mexican economy is certain to increase the number of its citizens attempting to cross the border to look for employment in this country, and that fact argues strongly for the earliest possible strengthening of present immigration controls.

The first major overhaul of the nation's immigration policies in 30 years won the approval of the Senate earlier this week, and by the surprisingly large margin of 81 to 18.

But the chief sponsor of the legislation (S. 2222), Sen. Alan K. Simpson (R-Wyo.) was the first to acknowledge that it is only "a small start, a very small stride forward."

Given Mexico's mounting difficulties and the complex and controversial aspects of immigration reform, Simpson is correct. No single measure will enable the government to guarantee equity in its immigration policies or to halt the massive flow of illegal immigrants.

The measure is now in the House of Representatives, where its enactment is likely this session, and President Reagan has said that he would sign it in its present form.

But intense disagreement over many features of S. 2222 will continue in the House and across the country even if the measure becomes law.

The most important sections have been under continuing fire. Employers object to fines and possible imprisonment for knowingly hiring illegal aliens. Civil libertarians argue that the necessity to proven legal status when applying for work would discriminate against all persons of Latino appearance.

The complaints may or may not have merit, that cannot be known until after the new policies are in place. But it is known that under existing laws the nation has lost control of its borders.

S. 2222 deals directly with the one reality on which its opponents and proponents can agree. Most illegal immigrants are from countries suffering from poverty and high unemployment, and they cross the border specifically to look for work.

The sanctions against employers who knowingly hire them—fines of \$500 to \$2,000 and six-month jail-terms for repeat offenders—should vastly reduce job opportunities for people without documentation and, simultaneously, increase them for legal residents. The requirement that job applicants have proof of legal status would also be a significant disincentive to clandestine immigration.

One control would not work without the other. It would be unreasonable to expect employers to screen applicants without specifying the acceptable forms of identification—a driver's license or a Social Security card.

The measure also calls on the Administration to devise, within three years, a forgery-proof identity card, which critics equate with the "domestic passport" common in totalitarian countries. That concern would be justified if the cards were issued only to immigrants, but all Americans would carry the new form of identification, which would have to be shown only when applying for work.

But the identity card and penalties against employers who knowingly hire illegals have given rise to charges that S. 2222 would result in harassment of Latinos and the refusal of many employers to even interview persons of Latino appearance.

We understand that concern, but other sections of the measure should allay suspicions that it is discriminatory against a single ethnic group.

Its amnesty provisions are appropriately generous; they would grant permanent legal status to all who came, to this country before 1977, and three-year temporary status to all who came before 1980. Most have come from Mexico.

Although the legislation would continue the present overall immigration quota of 425,000 a year, excluding refugees, it would give Mexico and Canada a quota of 40,000 each—double that of any other country. Further, it would allow Mexico to have the unused portion of the Canadian quota.

There are sections of S. 2222 that we do not like. We question the constitutional-ity of another section that declares recipients of amnesty ineligible for all federal assistance for the first three years of their legal residence, even if they are subject to payroll deductions for those benefits.

We also oppose a last-minute amendment by Republican Sen. H. L. Hayakawa expressing support for the designation of English as the official national language.

Simpson was right in opposing the amendment, if unsuccessfully, as a gratuitous insult to migrants who have yet to learn the language. But the amendment would have no legal effect, and is merely a token victory for Hayakawa, who has been to-



tally unsuccessful in his past efforts to pass a constitutional amendment to achieve the same dubious purpose.

The earlier that S. 2222 becomes law, the better. The present system simply isn't working, either to curb illegal immigration or to protect the rights of legal migrants. Economic and political distress elsewhere in the world are bound to aggravate the situation, and we are long past the time for testing new approaches.

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[Editorial from the Christian Science Monitor, Aug. 17, 1982]

### ACT NOW ON IMMIGRATION

For too many years the United States has been lax in controlling illegal immigration. Day after day the illegal aliens cross the loosely guarded frontiers—and end up imposing considerable social and economic strains on scores of communities throughout the US. Yet, as Senator Alan Simpson correctly pointed out last week, the “first and most important duty of sovereign nation” is to gain control over its borders. And it is precisely for that reason that the Senate now ought to act decisively and pass the new immigration control bill that is scheduled to come before that chamber for a full vote today.

The measure—the so-called Simpson Mazzoli bill, named for Senator Simpson and Congressman Romano Mazzoli—represents the first major immigration bill since enactment of the McCarran-Walter Immigration and Nationality Act back in 1952. The crucial point about the Simpson-Mazzoli bill is that it is not designed to check or end legal immigration. Indeed the measure would continue immigration at about the current level. However, it would seek to put a stop to the intolerable illegal entry into the United States of millions of persons annually in recent years. Surely any legislation that brings order to control of a nation's borders and requires that the same laws of entry apply equally to all persons cannot be called nativist or racist, as some Hispanic groups now are alleging about the new proposal.

The Simpson-Mazzoli bill would bring a halt to illegal immigration through three basic, sensible steps:

It would require some form of national identification system for all persons seeking a job within the US. The government would have three years to devise such a plan. During the interim period employers could use such already established credentials as a driver's license, social security card, birth certificate, passport, etc.

It would impose legal penalties and fines on employers knowingly hiring illegal aliens. Fines would range from \$1,000 for each illegal alien on the first offense to \$2,000 for each illegal alien on subsequent offenses.

Finally, the measure would provide an elaborate amnesty program for millions of illegal aliens already living in the US. Illegals who entered the US prior to Jan. 1, 1977, would be granted permanent resident status. Persons who entered the US between Jan. 1, 1977, and Jan. 1, 1980, would gain temporary resident status. After three years, they could become permanent residents and eventually apply for citizenship.

Hispanic groups and some civil libertarians object to the fact that, under the measure, persons in the temporary resident status would not be able to obtain federal public assistance or welfare funds for some three years or so. What must not be forgotten, however, is that millions of aliens have entered the US in clear violation of existing laws, usually during the dark of night, by one or another furtive manner. The fact that such persons would be granted amnesty and allowed to work toward eventual citizenship reflects an attitude of tolerance that probably few other industrial nations would have at this time of high unemployment.

The Simpson-Mazzoli bill is a long overdue attempt to gain control over US borders. It deserves congressional support.

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[Editorial for the Washington Post, Aug. 11, 1982]

### LAW AND THE ILLEGALS

The Senate is about to begin consideration of the Simpson-Mazzoli bill, a comprehensive revision of our immigration laws. The proposal is the result of years of study, extensive hearings and wise compromise on some of the more controversial aspects of this problem. One of the most important provisions is designed to control illegal immigration by penalizing employers who hire undocumented workers. Such a sanction, sponsors of the bill believe, is the only way to control borders since most illegal immigrants come here specifically to work.

The Select Commission on Immigration and Refugee Policies, created by Congress in 1979, estimated that between 4 million and 9 million undocumented workers are now in this country, but former labor secretary Ray Marshall, who was a member of that commission, admits that the estimate is a result of a compromise among a widely varying set of guesses as to the actual number. Officials simply don't know how many illegal aliens are here, but they do know that unemployment in this country is now at 9.8 percent, and that very job held by an illegal alien is one not available to an American citizen.

Many employers oppose any change in the present law-enforcement system since they prefer to pay very low wages to workers who cannot avail themselves of their rights. Mr. Marshall and many labor leaders believe that the only way to preserve these jobs and improve wages and working conditions in some industries is to eliminate that option for employers. He is right.

Another controversial question concerns refugees. Under the provisions of the Simpson-Mazzoli bill, 425,000 new immigrants would be allowed to enter the United States each year. This ceiling does not include refugees who under existing law, may be admitted in any number on the authority of the president as long as he notifies Congress of his intentions. Such flexibility is needed to deal with emergency situations where quick action must be taken for humanitarian reasons.

It was assumed that under the provisions of the law, about 50,000 refugees a year would enter the country, but for a variety of reasons—the continuing needs of Indo-Chinese refugees, the Cuban boat lift—that figure has been much higher in recent years. Sen. Walter Huddleston (D-Ky) would apply the 425,000 ceiling to immigrants and refugees combined. He would continue the president's flexible power to meet emergency situations by allowing large numbers of refugees in during any given year, but would then subtract numbers over the ceiling from the following year's quotas.

Those supporting the Huddleston position believe that Americans are suffering from "compassion fatigue," that we are already doing more than our share to accept the homeless and the persecuted of the world and that, for purposes of our own long-range economic planning, we must have a firm and fixed number of new admissions to the country. To disagree with this position is not to accuse its proponents of mean-spiritedness.

The United States has accepted on a permanent basis large numbers of refugees in recent years, and it has not always been easy. And we should take care that the total numbers do not regularly substantially exceed the original expectations of Congress. Nevertheless, the Huddleston amendment should be rejected because it will inevitably curtail this country's ability to accept its share of the world's refugees. In stark political terms, if refugees have to compete for quota numbers with the brothers and sisters of American citizens, there is no doubt who will be admitted.

This nation was founded as a haven. That quality is part of our national character, and there will always be room here for those who come without connections and without special skills simply because they must come here to survive. The Huddleston amendment severely restricts that tradition when a prudent application of existing law ought to be enough. The Simpson-Mazzoli bill should be passed without the Huddleston limitation, and the House should concur.

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[Editorial from the Star and Tribune (Minneapolis), Aug. 10, 1982]

### A CHANCE TO REMAKE U.S. IMMIGRATION POLICY

More immigrants now enter the United States than came during the peak flow of Europeans in the early years of this century. Immigration now accounts for about half the growth in U.S. population. Some immigrants come with permission, but many simply infiltrate America's borders. Sympathetic though Americans are to many who immigrate illegally, they also recognize that the United States needs a new immigration law—one drawn to be reasonable, fair and enforceable. An important proposal to reexert immigration control will come before the U.S. Senate this week. This bill deserves to be passed.

Sponsored by Sen. Alan Simpson, R-Wyo., and Rep. Romano Mazzoli, D-Ky., the legislation embodies the most sweeping and rational reform of U.S. immigration law in 30 years. It will need a strong victory in the Senate, and some luck, to be passed by the House before Congress adjourns for the fall campaign.

Many in Congress would just as soon not consider the Simpson-Mazzoli proposal in an election year. Various provisions are opposed by labor, local government, busi-



ness, civil-rights and religious groups, Hispanic groups and agriculture. The list of opponents indicates that the bill has teeth. But it also is fair and reasonable. The nation is more than a sum of its special interests; the Simpson-Mazzoli bill serves the national interest.

House and Senate versions of Simpson-Mazzoli differ in detail but contain the same four general provisions. They include:

Civil and criminal sanctions against employers who knowingly hire illegal aliens. Most illegal aliens come in search of work. Simpson and Mazzoli propose to eliminate their immigration incentive by making jobs for them scarce. The administration also would be directed to develop a counterfeit-resistant method for screening the status of job applicants.

Amnesty for illegal aliens who entered the country by Jan. 1, 1982. An estimated 3 million to 6 million illegal aliens reside in the United States. Because the United States cannot and should not search out and deport all of them, the best solution is to declare an amnesty, make a clean break with bad policies and start over.

An annual ceiling of 425,000 on admissions to the United States, and an improved temporary agricultural worker program. Refugees—people fleeing political oppression—would not be included under the ceiling.

Streamlined exclusion procedures. Aliens entering the United States illegally could be summarily excluded unless they claimed asylum. Those who made that claim would receive a hearing before an administrative law judge and have the right to appeal to a new U.S. immigration board.

Neither American citizens nor potential immigrants are served well by the current U.S. immigration policy mish-mash. Americans deserve to make their own immigration policy, not let it be made for them by potential immigrants and foreign governments. Those who seek a life in America deserve a set of clear, fair and uniformly applied rules and procedures by which they may gain entrance. The Simpson-Mazzoli bill provides both. Congress should embrace it.

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[From the Pioneer Press & Dispatch (St. Paul), July 24, 1982]

## REAGAN HAS FAILED TO STOP THE TIDAL WAVE OF ILLEGALS

(By Tom Braden)

It's an indisputable fact that the United States has lost a principal aspect of sovereignty: control of its own borders.

The Reagan administration came into office promising to regain control. But the immigration specialist at one of Washington's most conservative think-tanks said the other day that his estimate of the number of illegal immigrants now entering this country is about a million a year—just what it was under Jimmy Carter.

Failure to halt illegal immigration was one of the reasons Carter appeared to be a weak president. He welcomed the Cuban refugees, then discovered that Castro had filled a lot of boats from jails and mental institutions. His reputation changed overnight from kindly to sucker.

Reagan has not been forced to demonstrate weakness in public but, on this issue, the facts don't testify to strength.

The illegals are still coming from Pakistan and India by air to Toronto and bus and taxi to Detroit; from Third World flagships docking at U.S. ports and discharging their Chinese crews, from leaky boats on Florida's coast; most of all, from Mexico across a 2,000-mile border, manned by a force of immigration officers who number less than the police who watch over the city of Baltimore.

There ought to be some way in which to stop this tidal wave which promises within the lives of our children to make this country rather different than the one we had planned to make for them. If it is not stopped this will be a country of a different tradition, of a different color, of a different law, perhaps even of a different language.

Such a law has been proposed and is now before the Congress. It would:

Make it illegal to hire an illegal alien.

Require all citizens to carry a card identifying them as such.

Require all visitors to hold an unrefundable ticket home.

There are other provisions regarding amnesty for illegals who are already here and these provisions are being much argued about as though they were the crux of the matter.

They are not. The crux of the matter is that the illegal immigrants come to this country in search of jobs. They get jobs because they are willing to do labor that many employers maintain American citizens won't do.

As a veteran of the Great Depression and of a couple of years spent cleaning out men's rooms and women's rooms, I don't believe this complaint is valid. Anyhow, I'm in favor of putting it to the test.

Nor would I find it a violation of my civil liberties to be required to carry an identity card. I have not found that my freedom of speech or movement or right to the privacy of my home is in any way impaired by the fact that I carry a Social Security identifying number in my wallet. It would be hard to devise a card which is forgery-proof, but surely the Bureau of Printing and Engraving is capable of coming up with something within the three years the Simpson-Mazzoli Bill mandates that the job be done.

Nonetheless, the bill languishes. The Reagan administration has not pushed it. Not one candidate among the Democratic front-runners has made support for immigration reform a talking point in his campaign.

Sometimes one wonders whether democracy works.

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[Editorial from the Herald American (Boston), June 22, 1982]

### WEIGHTED AGAINST ALIENS

A growing consensus on the need to overhaul the nation's chaotic immigration laws may push the Simpson-Mazzoli immigration reform through Congress this year, provided it is not weighted down with the costly provisions now demanded by some local governments.

That is why we hope Congress will resist attempts to encumber the immigration control legislation with amendments requiring the federal government to reimburse states and counties for any public assistance obtained by aliens who would be granted legal residence under the proposed laws. The indemnity provision is sought by the National Association of Counties which fears an amnesty provided in the immigration reform would entitle 2.7 million aliens now residing illegally in this country to apply for as much as \$500 million in welfare.

The fear of a massive march on the welfare office by newly legalized aliens seems far-fetched, inasmuch as most aliens remain here because they have found productive jobs. But even if the fears are realized in some degree, the bills sponsored by Sen. Alan Simpson, R-Wyo., and Rep. Romano Mazzoli, D-Ky., already have built-in mechanisms to prevent a drain of local welfare funds.

The new immigration legislation calls for a study 18 months after the reform becomes law to assess its impact on state and local governments. Retroactive federal reimbursement is authorized if a cost to local taxpayers is found.

That strikes us as adequate protection for local government against undue welfare costs because of amnesty granted undocumented aliens. The Simpson-Mazzoli immigration reform is too important and too long overdue to be smothered under the burden of millions of dollars in welfare indemnities.

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[Editorial from the Dallas Morning News, May 29, 1982]

### ILLEGAL ALIENS—A BIT OF HISTORY

Progress in achieving justice for illegal immigrants has been painfully slow in the past decade. But one bastion of inertia now has been breached. The U.S. Senate Judiciary Committee has passed its first immigration legislation in 17 years.

Although we haven't seen the entire product, it does have commendable features. Employers can be penalized for hiring illegal aliens. And amnesty provisions were liberalized. Contrary to popular misconceptions, the aliens wouldn't get instant, automatic citizenship. If residence in the United States prior to Jan. 1, 1978, can be proved, the aliens get resident alien status. If they arrived between 1978 and Jan. 1, 1982, they can get temporary resident status.

Of course, the legislation needs to be carefully studied before final floor action in the Senate. But it is a remarkable achievement by Sen. Alan Simpson, R-Wyo., to prompt any action at all by his colleagues.

While the bill may not be perfect, it is at least an attempt to solve a festering problem. And considering Congress' record of fearful inaction for the past decade, that's progress.



Mr. MAZZOLI. Today, as our leadoff witnesses, we have a number of our colleagues in the House who have expressed a desire to testify. We welcome them and are grateful for their having taken the time from their busy schedules to give us the benefit of their ideas on this legislation. Later on this morning we will have Attorney General William French Smith testify as the lead administration witness.

I thank all of you for coming, and I believe these will be interesting hearings.

At this point I ask to come forward our colleague from the State of California, Congressman Don Edwards, who will be our leadoff witness today.

Don, we welcome you. Your statement—and we appreciate your having filed it early for us—is hereby made a part of the record.

#### TESTIMONY OF HON. DON EDWARDS, REPRESENTATIVE FROM THE 10TH DISTRICT OF CALIFORNIA

Mr. EDWARDS. Thank you very much, Mr. Chairman. I appreciate your allowing me to testify before such a distinguished committee today on this very important subject. And I want to express my appreciation for the devoted and hard work that you, Mr. Chairman, and the other members have done on this key issue. We are all very grateful to you for it.

Mr. MAZZOLI. I thank you.

Mr. EDWARDS. I have only a short statement, and I am going to limit my remarks to what I see as the heart of the bill, that is, employer sanctions. I have been dealing with employer sanctions ever since I've been here, which is going on 21 years now. Employer sanctions first surfaced back in 1946. The provisions in the bill on employer sanctions are not acceptable to many millions of American citizens. I recall, and you recall, the eloquent dissent in the debate on the House floor by our Hispanic members and by some of the black members. The agony is very real insofar as many millions of American minorities are concerned with regard to employer sanctions.

I suggest also, Mr. Chairman, that the concept of employer sanctions is not only extremely divisive; it is going to be ineffective.

A look at history shows that wherever employer sanctions have been tried, they have been ineffective. A GAO report, dated August 31, 1982, points out that they have been tried in 19 other countries and they have been ineffective. In our own country, the Federal Farm Labor Contractor Registration Act of 1963 gives evidence that employer sanctions have been ineffective in the United States at the national level. We have had employer sanctions in a number of States, including my own State of California. These laws are on the books. A 1980 report by the Comptroller General found that the most our domestic employer sanctions laws had produced was one \$250 fine.

Mr. Chairman, with such a history for employer sanctions, it is surely time for fresh thinking, resourcefulness, and creativity in searching for a solution to the acknowledged problems of illegal immigrants. With employer sanctions, what we are going to get is harassment of our Nation's employers, increased discrimination

against our Nation's minorities, possibly a national ID card for each American citizen—at an immense cost, it is estimated—and a program to control illegal immigration that won't work.

I call your attention to the recent conference of the American Bar Association in New Orleans. They adopted a resolution on employer sanctions. It says:

Be it resolved, that the American Bar Association recommends that employer sanctions should be rejected because they would be an unworkable, ineffective, expensive and discriminatory procedure for controlling undocumented immigration.

#### The ABA recommended—

Those Federal agencies charged with administering the immigration and refugee laws and the pertinent laws governing fair labor standards and practices should be provided sufficient resources and organization to enforce and administer the laws effectively and fairly.

I suggest, Mr. Chairman, that this is the challenge to the distinguished members of this subcommittee. Much of the problem of illegal immigration has come from our lack of providing enforcement agencies with sufficient resources. Rather than putting billions of dollars into trying to come up with, implement, and maintain a national ID system and enforcement of employer sanctions, I respectfully suggest that the moneys would be better spent in enforcing our labor laws and in providing resources to INS and other enforcing agencies.

Mr. Chairman, I do know that there will be some alternative plans and amendments offered by well-meaning, very responsible people from all over the United States, and I know that you will consider these alternatives with respect.

I thank you for allowing me to be here today.

[The complete statement follows:]

#### STATEMENT OF HON. DON EDWARDS OF CALIFORNIA

Mr. Chairman and other distinguished members of the Subcommittee, thank you for inviting me to present my views on H.R. 1510, the Immigration Reform and Control Act of 1983.

I will limit my remarks to what I see as the heart of the bill, that is, employer sanctions. Mr. Chairman, the provisions of the bill on employer sanctions are simply not acceptable to many millions of American citizens. The concept of employer sanctions is not only extremely divisive, it is also of dubious efficacy.

A look at history shows that wherever employer sanctions have been tried, they have proven ineffective. A GAO reports, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," dated August 31, 1982, points out that employer sanctions have been ineffective in nineteen other countries. In our own country, the federal Farm Labor Contractor Registration Act of 1963 gives evidence that employer sanctions have been ineffective in the U.S. at the national level. In addition, employer sanctions have been proven ineffective at the state level in the many states with such laws on the books. A 1980 report by the Comptroller General found that the most these laws had produced was one \$250 fine.

Mr. Chairman, with such a history for employer sanctions, it is surely time for fresh thinking, resourcefulness, and creativity in searching for a solution to the acknowledged problem of illegal immigrants. With employer sanctions, what we will get is harassment of our nation's employers, increased discrimination against our nation's minorities, possibly a national I.D. card for each American citizen, and a program to control illegal immigration that will not work.

The American Bar Association, at its recent conference in New Orleans, adopted a resolution on employer sanctions. I quote:

"Be it resolved, that the American Bar Association recommends that employer sanctions should be rejected because they would be an unworkable, ineffective, expensive and discriminatory procedure for controlling undocumented immigration."



They recommended, and I quote:

"Those federal agencies charged with administering the immigration and refugee laws and the pertinent laws governing fair labor standards and practices (should) be provided sufficient resources and organization to enforce and administer the laws effectively and fairly."

I believe this is the challenge to the distinguished members of this subcommittee. Much of the problem of illegal immigration has come from our lack of providing enforcement agencies with sufficient resources. Rather than putting billions of dollars into trying to come up with, implement, and maintain a national I.D. system and enforcement of employer sanctions, I respectfully suggest that the monies would be better spent in enforcing our labor laws and in providing resources to INS and other enforcing agencies.

Mr. MAZZOLI. Thank you very much, Don.

We certainly have scheduled these 7 days of hearings for the very purpose of hearing new and refreshing information that perhaps we didn't have last year, or all the old information arrayed in new forms that might give us a lead on how better to draft our bill. These are meant to be very intensive and in-depth discussions, and all proposals and amendments will be given full consideration.

Let me ask you this. It certainly came to us at the full committee last year and on the floor that the attitude of many of the members was:

Look, you're on the wrong track. Instead of worrying about setting up all this mechanism to have employers file papers and employees produce proof, just enforce the existing law. Enforce the existing immigration laws through the existing Immigration Service, and, furthermore, enforce the Fair Labor Standards Act, OSHA, and all the other statutes.

Let me ask you this question, Don: If we were to zealously enforce all of the work standard and pay laws, are we going to solve the problem of the fact that these people who are in this country now without documents are docile, are tractable, because they are afraid. They have their heads down and their necks bowed. Will the enforcement of labor laws alone cause them to be able to lift their heads up?

Mr. EDWARDS. I think that's actually a different issue, Mr. Chairman. This bill has many fine features, and one of the fine features that I have always supported is legalization somewhere along the lines that the subcommittee has suggested, or perhaps even a more generous legalization solution as suggested by Chairman Rodino.

I am concentrating my dissent on employer sanctions, I could certainly live with the bill and support it with enthusiasm if we could have some resolution of the employer sanctions aspect.

Mr. MAZZOLI. So it is your view that legalization can pass this Congress without an attendant feature of employer sanctions?

Mr. EDWARDS. I think the American people, when they really understand the issue, given the national debate that will take place, will be magnanimous and will understand that we are going to have a more peaceful country and a fairer country if there is legalization, but it's going to take some work, of course, out in the 50 States.

Mr. MAZZOLI. I appreciate your saying that. A lot of our time in the last Congress was spent trying to allay the fears of many of our members about legalization. We tried all sorts of formulas—single tier, double tier, triple tier, and everything else, to try to overcome some of the arguments. And unless I misread the tea leaves, there remains a fairly serious concern of many of our members about the

idea of legalization. Of course, some have said that they will accept it only if there is passed contemporaneously some mechanism which would tend to stem the flow of people into the country so we could have a finite problem to deal with. They say without enforced order, without employer sanctions, you have an infinite problem.

So there are some who possibly might disagree with your analysis, but I certainly do appreciate that.

Mr. EDWARDS. I understand that, Mr. Chairman, and I think it's going to take some work. I point out that in another subcommittee, the subcommittee that I have the privilege of chairing, a lot of people said that we couldn't strengthen and renew the Voting Rights Act, and with the help of people like the distinguished member on your left, Mr. Fish, who offered great leadership in the minority party, we were able to do the right thing with the right bill to everybody's surprise.

Mr. MAZZOLI. Thank you. Well, I am sure that nothing is really impossible in this world in this Congress.

Does the gentleman from New York have any questions?

Mr. FISH. Let me at the outset compliment you, Mr. Chairman, as I did your counterpart, the Senator, who held hearings last week.

I am delighted that we have started early in this Congress on immigration reform and control under your leadership. I think you and Senator Simpson have shown a great deal of resiliency after spending 2 hard years on the same issue.

I do have an opening statement, and I ask permission to put it in the record.

Mr. MAZZOLI. Without objection, it is received.

[The complete statement follows:]

#### STATEMENT OF HON. HAMILTON FISH, JR., ON H.R. 1510

Mr. Chairman, I welcome the opportunity to participate today in our first hearing on H.R. 1510, the Immigration Reform and Control Act of 1983. The gentleman from Kentucky, the chairman of this Subcommittee, deserves commendation for his perseverance and resilience. Few people have given of themselves so much to realize necessary but difficult changes in our immigration laws. The gentleman from California, the Subcommittee's new Ranking Minority Member, worked diligently on similar legislation in the last Congress. I look forward to his leadership in this session.

Years of work have been devoted to fashioning the major immigration legislation often referred to as the "Simpson-Mazzoli bill." The Select Commission on Immigration and Refugee Policy held twelve regional hearings in different parts of the United States, conducted 24 in-depth consultations, and authorized extensive social science and legal research. A Cabinet-level task force carefully scrutinized the Select Commission's findings and recommendations. In the last Congress, this Subcommittee and its Senate counterpart heard numerous witnesses from Federal, State, and local governments, business and labor organizations, industry and agriculture, religious and ethnic groups, and civil liberties organizations. Our Judiciary Committee, although unable to please everyone, made a conscientious effort—under the leadership of the gentleman from New Jersey—to accommodate very diverse concerns and balance competing interest.

Although the Senate passed its bill last August by the decisive margin of 80-19, the House regrettably failed to call up our bill until the eleventh hour of the lame-duck session. Last year we ran out of time—but this year we are determined to move this legislation to final passage at an early date!

The American people, for many years, have called upon the Congress to confront our lack of control over our borders. We have the opportunity, in this Congress, to



act with firmness to deter future illegal entry and at the same time reaffirm America's historic commitment to accept legal immigrants from other lands.

Employer sanctions, the centerpiece of immigration law enforcement, is a key provision in this bill. H.R. 1510 attempts to discourage the annual flow of hundreds of thousands of undocumented aliens by removing the major inducement to illegal migration—the magnet that draws people to our shores—the opportunities for employment. The concept of employer sanctions has received the support of a number of Administrations, favorable votes on two occasions in the House and once in the Senate, and the endorsement—by a 14-2 vote—of the Select Commission on Immigration and Refugee Policy. Alternatives have been considered and found wanting. Employer sanctions constitute the only effective option—in the judgment of many people who have focused on the problem of illegal immigration.

This legislation specifically guards against the possibility of imposing sanctions on employers who hire illegal aliens unknowingly. The language of Section 101 provides that it is unlawful to hire an alien "knowing the alien is an unauthorized alien . . . with respect to such employment. . . ." An employer that "establishes that it has complied in good faith" with the verification requirements "has established an affirmative defense. . . ." I believe the statutory language as well as the legislative history will protect American businesses by limiting the application of employer sanctions to "knowing" violations. The Business Roundtable, by endorsing similar legislation last year, expressed its faith that employers will receive fair treatment.

H.R. 1510, moreover, has been designed to protect ethnic minorities against invidious discrimination. Four separate provisions of this bill are designed to prevent discrimination. Employers of four or more persons who ignore a warning and fail to follow paperwork/verification requirements will face a \$500 civil penalty ("for each individual with respect to which such violation occurred") regardless of whether the individual turns out to be a U.S. citizen or lawful permanent resident alien. By following the paperwork requirement, the employer will know whether the applicant is eligible. He need not fear making a mistake. The employer will discriminate against minority groups at his peril.

I believe the full Judiciary Committee strengthened the protections against discrimination in the course of our markup last year. One important provision inserted by the Committee directed the Civil Rights Commission to monitor the enforcement of employer sanctions. In addition, H.R. 1510—which reflects Judiciary Committee action last year—directs the Attorney General, the Secretary of Labor, and the Chairman of the Equal Employment Opportunity Commission to review and investigate complaints of discrimination. Another provision of H.R. 1510 requires the President to consult with Congress every six months concerning the implementation of employer sanctions—including possible discrimination in employment. The very extensive monitoring and reporting mechanisms are an expression of the importance we attach to guarding against discrimination.

Many of us are confident that existing civil rights legislation, State and Federal, will provide an important measure of protection in a substantial number of cases of discrimination based on national origin. Congressional oversight, moreover, will help insure that the new statute is properly enforced.

Another major focus of this legislation is reform of the immigration adjudication process. Today, exclusion, deportation, and asylum adjudications are beset with crippling delays. H.R. 1510 upgrades the administrative adjudicatory structure—by providing it greater independence and stature—and thus minimizes the need for protracted judicial involvement. We have preserved the critical role of the Federal judiciary in adjudicating the important liberty-related matters that arise in some immigration cases but have eliminated needless layering of review.

This legislation, finally, recognizes that substantial numbers of illegal aliens are here to stay and responds realistically and humanely to their plight. At the same time that we act with firmness to deter future illegal entry, we must display compassion in our treatment of those aliens who have become a part of our society. The conferral of a legal status on undocumented aliens with years of U.S. residence will permit this population to come out of the shadows and contribute more to our country.

The Select Commission, by a 16-0 vote, favored "A legalization program as part of its enforcement package." Precedents in U.S. law for legalizing the status of undocumented aliens can be found in the registry date—which serves as a statute of limitations on illegal entry—and the discretionary remedy of suspension of deportation.

H.R. 1510, in my opinion, sets appropriate cut-off dates for eligibility for legalization. Persons who entered the United States prior to January 1, 1977 may qualify for permanent resident status, and persons who entered prior to January 1, 1980

may qualify for temporary resident status, a transition status leading to permanent residence after three years.

The approach of H.R. 1510 represents an appropriate compromise between the views of those who would eliminate the legalization provisions entirely or only advance the registry date to 1973—and those who would provide lawful permanent resident status to persons who entered prior to January 1, 1982. A failure to provide a substantial legalization ignores the equities of persons who have lived in the United States for a number of years, perpetuates the existence of a large underclass of illegal aliens, and continues to subject citizens and lawful permanent resident aliens to enormous social costs.

I look forward to these hearings on a critically important bill, confident that this year we can bring an important law reform effort to fruition.

Mr. FISH. I suppose it was our distinguished colleague from California's intent to pull my fangs, don't you think? And he has succeeded.

I understood before I arrived that you said that during the course of this hearing you thought people would come up with alternatives to employer sanctions, so I am not going to raise the issue now. The message I want to give to you is that those of us who served on the Select Commission for 2 years and on this issue in the last Congress couldn't find an alternative that would be effective. And we believe, as Father Hesburgh, who was chairman of our Commission, that this was the centerpiece, the enforcement, the only humane way of attempting to get some control over the number of surreptitious entrants that are coming in and the consequences that follow from that.

So I think the burden is on those who don't like that part of the bill to come up with something as effective. I certainly hope that would be the main result of this hearing.

I thank you, Mr. Chairman.

Mr. EDWARDS. I thank you, Mr. Fish, and I will try to be a part of that process. I recognize the difficulty of this issue and the great work that you have done, and certainly we can't just sit here and be critical and not be creative ourselves at the same time.

Mr. FISH. Thank you.

Mr. MAZZOLI. Thank you very much, I appreciate your help, Don.

According to our schedule, Congressman Garcia is next. We are a little bit early. Is he or Congressman Wright, Congressman Brown, Congressman Shaw, Congressman Towns, Congressman Lujan here?

All right, we'll take a momentary pause until some of them show up.

[Whereupon, a short recess was taken.]

Mr. MAZZOLI. The subcommittee will come to order.

It is my pleasure today to welcome before us the gentleman from New York, Congressman Robert Garcia. Bob, you're welcome. Your statement, of which I have a copy, will be made a part of the record.

#### TESTIMONY OF HON. ROBERT GARCIA, REPRESENTATIVE FROM THE 21ST DISTRICT OF NEW YORK

Mr. GARCIA. Thank you very much, Mr. Chairman.

These have been difficult times for your subcommittee and for the full committee because of your responsibility of trying to come up with a meaningful immigration reform package. But I am de-



lighted that we are starting in February, as opposed to debating this issue at the tail end of a lameduck session.

Mr. MAZZOLI. Thank you very much.

Mr. GARCIA. I also want to commend you for your continued efforts to seek a resolution to our Nation's immigration problems that will be satisfactory to all groups and communities throughout the United States.

During the debate on the floor of the House at the close of the 97th Congress, I made my views on this issue known. I have not changed my position since that time. Although, as I said, I welcome this chance to clearly express my views.

Because of time limitations, I will try to be brief. There is probably no more profound legislation confronting our Nation than the now famous Simpson-Mazzoli immigration bill. Our immigration policy is a reflection not only of how we control our borders but what the future demographic makeup of our Nation will be.

I am certain that none of us who have seriously considered this problem would disagree with the principle that we need a new policy, one that is both tough and fair—and I underline "fair." The construction of this law is where the debate begins.

Let me start off with what has bothered the minority communities across America the most, employer sanctions. The fining of employers who hire undocumented workers may be sound in theory, but I am not convinced that in practice it would work. A General Accounting Office study commissioned by Senator Simpson on "the enforcement of laws regarding employment of aliens in selected countries" indicates that sanctions do not necessarily work.

The GAO received responses from 19 countries and Hong Kong. The study reported that—and I quote:

"Although each country had laws penalizing employers of illegal aliens, such laws were not an effective deterrent to stemming illegal employment \* \* \*"

I have suggested the enforcement of existing labor laws in place of sanctions. This would deter employers from hiring undocumented workers, and at the same time force them to upgrade wages and working conditions. This could, in effect, remove the incentive for hiring undocumented persons.

The primary problem with sanctions is that they are inherently discriminatory toward minorities. Not only that, they put an excessive burden of paperwork on businesses.

That is why target enforcement of labor laws, concentrated on those industries that take advantage of undocumented persons, are so practical. They eliminate the impetus for an employer to discriminate against minorities. They also do not require small businessmen to maintain an excessive amount of paperwork on employees.

Let's try enforcing existing labor laws. There is no question that the machinery is in place. No new laws and regulations are required. Additional funding for the Department of Labor for the enforcement of these laws could be included in the bill.

The elimination of sanctions also puts off the need for establishing a national ID card. This idea is particularly disturbing to minority groups, because we are the ones who will most often be required to present our ID card or number.

An ID system would be expensive to implement. Further, it creates another potential black market that would drain the resources of the desperate and the needy. It is also important to remember that the poor and chronically unemployed already feel frustrated with government. An ID system would be looked upon as another stumbling block placed in their way for getting a job and becoming integrated into society. The poor don't need to become even more alienated. I'm not saying the United States will never have to turn to sanctions or an ID system, but I am saying that there are alternatives that should be used before considering sanctions.

I do not support an expansion of the H-2 temporary worker program. This seems to be a thinly disguised bracero program, which was created as a result of a labor shortage. We certainly do not have that problem now. Let's make certain that all U.S. farmworkers are fully employed before we bring in workers from other countries.

The H-2 program was designed to handle emergency labor shortages. It has now become routine. An expansion of H-2 would only further depress wages and working conditions for U.S. farmworkers.

I strongly support an amnesty for all undocumented persons living in this country. I believe amnesty should be made retroactive 1 year prior to the enactment of this bill. I believe all individuals covered by amnesty should become legal residents, and I believe that the United States should make it known that this is a one time only proposal.

I do not view sanctions as a necessary precondition for amnesty. These, as far as I'm concerned, are separate issues. Amnesty is an attempt to integrate the underclass of individuals who are living in this country without documents, outside the law. Sanctions are designed to discourage new immigration. They do not necessarily go hand in hand. Further, the two-stage legalization program that was contained in H.R. 7357 would have proven to be a bureaucratic nightmare. Not only that, but it would not have brought out all the individuals who are today living apart from our society.

It is important that this amnesty program is included in the bill and not left up to the discretion of the Attorney General. A commission should be set up, containing minorities and those persons who are most affected, to oversee the implementation of the amnesty program.

Any funding that would be used for organizing and implementing a complex two-stage legalization program could be given to the INS for enforcement. And I might add that the INS needs our help. It needs money for more officers, for better equipment, and obviously for better training.

The United States must also begin to deal with those nations that are prime senders of immigrants. We don't have to develop our policy according to the needs of the governments of Mexico and other Latin American countries. But if we want to effectively control our borders, we had better consult with countries such as Mexico.

The ongoing crisis in that nation is providing even more of a push factor for illegal border crossings. Perhaps through multilateral programs we could provide economic aid for the Mexicans to



develop labor-intensive industries, or we could provide technical training for Mexican nationals to develop such industries, or simply remain open to suggestions made by the Mexicans and other governments of nations that send us the bulk of our undocumented persons.

I am not certain whether or not a Caribbean Basin Initiative or a CBI-styled approach to this problem is best. Maybe we can develop programs through the Agency for International Development. The Inter-American Foundation is probably the finest example of an effective way of helping the poor of Latin America to help themselves. Whatever our approach, we must consider the foreign policy aspects of immigration policy as part of the solution.

We should not deprive political refugees of their day in court. Judicial proceedings for asylum cases can be legitimately streamlined but not at the expense of denying these individuals access to our Federal judicial system.

In addition, refugees from non-Communist countries must be given the same chance as refugees from Communist countries for receiving asylum. These proceedings should not be based on ideological considerations but on legitimate political persecution.

I see no need to alter the family preference system. It is my understanding that the difficulties for the INS under the present system are procedural. If that is the case, additional funding might make a difference in eliminating these difficulties. The family unit is too important to the basic fabric of our society to undermine it in any way.

I support a new immigration policy, but one that will not be discriminatory toward minorities. I feel it is my responsibility to stand up for my community. I cannot support a law that would further alienate or potentially discriminate against my, or any other, minority community. On this particular matter, all Americans need to work together to build for the future.

[The complete statement follows:]

#### STATEMENT OF HON. ROBERT GARCIA

Mr. Chairman, I welcome this opportunity to testify before your subcommittee on an issue of extreme importance not only to the Hispanic community but to the Nation as a whole. I commend you for your continued efforts to seek a solution to our Nation's immigration problems that will be satisfactory to all groups and communities throughout the United States.

During the debate on the floor of the House at the close of the 97th Congress, I made my views on this issue known. I have not changed my position since that time. Although, as I said, I welcome this chance to clearly express my views.

Because of time limitations, I will try to be brief. Any questions you may have can be submitted to staff, and I will have my responses back to you as soon as possible.

There is probably no more profound legislation confronting our Nation than the Simpson-Mazzoli immigration bill. Our immigration policy is a reflection not only of how we control our borders, but what the future makeup of our Nation will be.

I am certain that none of us who have seriously considered this problem would disagree with the principle that we need a new policy, one that is both tough and fair. The construction of this law is where the debate begins.

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legal aliens, such laws were not an effective deterrent to stemming illegal employment . . ."

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That is why target enforcement of labor laws, concentrated on those industries that take advantage of undocumented persons, are so practical. They eliminate the impetus for an employer to discriminate against minorities. They also do not require small businessmen to maintain an excessive amount of paperwork on employees.

Let's try enforcing existing labor laws. The machinery is in place, no new laws and regulations are required. Additional funding for the Department of Labor for the enforcement of these laws could be included in the bill.

The elimination of sanctions also puts off the need for establishing a national ID card. This idea is disturbing for all civil libertarians, and particularly for minorities, because we are the ones who will most often be required to present our ID card or number.

An ID system would be expensive to implement. Further, it creates another potential black market that would drain the resources of the desperate and needy. It's important to remember that the poor and chronically unemployed already feel frustrated with the Government. An ID system would be looked upon as another stumbling block placed in their way for getting a job and becoming integrated into society. The poor don't need to become even more alienated. I'm not saying the U.S. will never have to turn to sanctions or an ID system, but I am saying that there are alternatives that should be used before considering sanctions.

I do not support an expansion of the H-2 temporary worker program. This seems to be a thinly disguised bracero program, which was created as a result of a labor shortage. We certainly do not have that problem now. Let's make certain that all U.S. farm workers are fully employed before we bring in workers from other countries.

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The United States must also begin to deal with those nations that are prime senders of immigrants. We don't have to develop our policy according to the needs of the Governments of Mexico, or any other Latin American nation, but if we want to effectively control our borders, we had better consult with countries such as Mexico.

The ongoing crisis in that nation is providing even more of a "push" factor for illegal border crossings. Perhaps through multilateral programs we could provide economic aid for the Mexicans to develop labor intensive industries, or we could provide technical training for Mexican nationals to develop such industries, or simply remain open to suggestions made by the Mexicans, and other governments of nations that send us the bulk of our undocumented persons.



I am not certain whether or not a CBI styled approach to this problem is best. Maybe we can develop programs through aid. The Inter-American Foundation is probably the finest example of an effective way of helping the poor of Latin America to help themselves. Whatever our approach, we must consider the foreign policy aspect of immigration policy as part of the solution.

Further, we should not deprive political refugees of their day in court. Judicial proceedings for asylum cases can be legitimately streamlined, but not at the expense of denying these individuals access to our Federal judicial system.

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Mr. MAZZOLI. Thank you very much, Congressman.

The Chair yields itself 5 minutes for some leadoff questions.

With respect to the judicial review of the petitions for asylum, as the gentleman knows, our bill in the House is much different than the Senate's which does not have any review. In our bill we guarantee a judicial review for all petitioners for asylum. And even those who are apprehended at the shoreline, who have just entered the country—even those have an administrative review. So we did guarantee that extensive due process.

But as far as legal immigration is concerned, as you say, the House bill doesn't get into that. It leaves the current law in effect.

I'm glad the gentleman mentioned the sending nations' problems, because, of course, they are acute and they are tending to get worse. Unless we somehow deal with them, we have very difficult times ahead. But based on how the Caribbean Basin Initiative was kicked around, it may be very difficult. I certainly intend to do what we can in drafting our bill to attend to those factors.

Let me go back to something, Congressman, on page 2 which was brought up by the preceding witness, Congressman Edwards. That is, you believe you can solve the problem of illegal entry by enforcing existing labor laws. And you say in the second line of your paragraph 2 on page 2, "This would"—that is, the enforcement of existing labor laws—"deter employers from hiring undocumented workers."

I wonder why you say that, or maybe you can explain that, because some of the information we have is that many of the undocumented work for much higher than the minimum wages, and in working conditions which are not afoul of OSHA or other labor laws.

So I wonder, if you simply enforce current labor laws, how do you deter an employer from hiring the undocumented?

Mr. GARCIA. Well, I spent 13 years as a State senator, and during part of that time I served on the Labor Committee in the State senate in the State of New York. During this time, a bill on employer sanctions was introduced and defeated. I worked hard to see that the bill would not pass. I did not believe in sanctions then, nor

do I now. As I said, they are potentially discriminatory. In addition, we found that the cooperation between the State and the Federal Government was sufficient, in many instances, to stop some of the illegal movements of some of the employers.

Of course, there is no magic solution to this problem because whatever answer we come up with in this debate there will always be somebody to dispute it.

It is my sense, Mr. Chairman, that since we were able, in the State of New York, to hold down the hiring of undocumented persons to a minimum; we could do this at the Federal level.

Mr. MAZZOLI. I thank the gentleman for his comments. I certainly intend to see that the Nation's labor laws are strengthened. And since our bill probably will be referred to other committees, as it was last year, we intend to put something in there, either in dollars or, in the sense of this committee, signify that the Education and Labor Committee give strong attention to enforcing and providing personnel and the money to the Labor Department for the enforcement of the law.

But, again, there are jobs in the country which are now being held by the undocumented which are for pay above the minimum wages in conditions which are not sweatshop conditions.

And those jobs seem to be on the increase, as against the sweatshops which seem to be on the decrease. I have some concern about whether or not simply the enforcement of labor laws would be enough. But I appreciate the gentleman's statement.

Mr. GARCIA. Mr. Chairman, I believe this problem is immense, but I also believe that the enforcement of the labor laws is a viable alternative for solving this problem. Of course, there are undocumented persons working for more than the minimum wage, but by and large, as the failure of Operation Jobs indicated, these people hold jobs that are not wanted by U.S. citizens.

Mr. MAZZOLI. I thank the gentleman.

The Chair yields 5 minutes to the gentleman from Michigan, Mr. Crockett.

Mr. CROCKETT. Thank you, Mr. Chairman. I really have no questions. I want to express my appreciation to the Congressman. He touched on several issues which bother me greatly.

I share his view that if we conscientiously enforce the laws that are presently on the books, that would go a long way toward solving the problem. I am told that the total number of border patrolmen that we have is not equal to the number of capital police we have right here in Washington. So maybe we should begin by having some provision to give cause for employment of more personnel in the Immigration and Naturalization Service.

Thank you, Mr. Chairman.

Mr. MAZZOLI. I thank you.

The gentleman from Florida and newest member of our committee. We formally welcome Congressman Smith.

Mr. SMITH. Mr. Garcia, I was very interested in your remarks. I understand some of the concerns you have, and of course I share a lot of those concerns. What bothers me, however, is that I come from a State that probably for all intents and purposes is suffering most in terms of outbreaks of large numbers of refugees in a given short period of time, and we have had some major problems. We

are not like the State of California where there has been a steady stream or influx over a number of years. We have had some major outbreaks.

And in light of some of the things you said, I am curious, with your suggestions on how to change this, as to how you would prevent large-scale outbreaks of refugee migration, a situation where large numbers of people are displaced from the job market by virtue of illegals being hired on a large basis.

Again, we are not talking about small outbreaks. How would you prevent the migration of large numbers of less than desirable persons. Many good people came to Florida, but many bad people came too. How would you prevent the outbreak of hiring people who are basically dangerous to the American type of democracy and to the criminal justice system, if you did not have some method in place for determining who they were and trying to get a handle on them before they created major problems inside the United States?

Mr. GARCIA. Just let me answer that in two parts, if I may, because I think it is important to consider what part of the country we are talking about.

Many agricultural States are supportive of the H-2 program contained in this bill which imports foreign labor. There is no guarantee that these workers will be, at times, obedient to the law. There are always risks.

Further, in many instances across the country, undocumented persons are keeping industries alive because they are doing jobs that U.S. citizens do not want to do.

Although, and I must admit that you have a special case in the State of Florida, but I hope the foreign policy aspect which I mentioned in my testimony would help stem the tide of the massive immigration of Caribbean and Latin American persons to your State.

Mr. MAZZOLI. Well, I'm sorry, the gentleman's time has expired. I apologize. The majority leader is here.

Mr. SMITH. Thank you.

Mr. MAZZOLI. Congressman, thank you very much, and let me also thank you for your consistent expression of cooperation.

Mr. GARCIA. Before I finish, Mr. Fish, who is my colleague from the State of New York, said to me—and I, incidentally, know he's been very sensitive about the issue—"Look, those of you who are opposed to employer sanctions, come up with an alternative to present to the Committee."

I would say to you, Mr. Chairman, as the chairman of the congressional Hispanic caucus I am prepared to work with you to see if we can't come up with an alternative that would be agreeable to the committee and to the minority communities throughout America.

Mr. MAZZOLI. I thank the gentleman very much.

We are graced by having with us as our next witness the gentleman from Texas, the distinguished majority leader of the House of Representatives, Congressman Jim Wright.

Jim, without objection, any statement which you may prepare later will be put in as part of the record. We will be happy to hear from you.



TESTIMONY OF HON. JAMES C. WRIGHT, REPRESENTATIVE FROM  
THE 12TH DISTRICT OF TEXAS

Mr. WRIGHT. Thank you very much, Mr. Chairman.

I don't have a prepared statement, unfortunately. I want to visit with the members of the committee, though, and I am grateful for the privilege you have extended to me to come and talk with you about some of the dimensions of this problem and a few of the reservations that some of us had had last year, and maybe a suggestion here and there as to how those reservations might be allayed and the program improved.

The first thing I want to stress is that I appreciate very much the determination of this committee to move rapidly and expeditiously this year to report a bill, not waiting to the end of the session. Last year we had an unfortunate situation, of which the chairman is fully aware, and with which he was, I think, extremely patient. It developed, unfortunately, that there were some Members of the Congress who had wanted to testify and make some recommendations with regard to the formulation of the program who didn't feel they had been given that opportunity prior to reporting of the bill. That generated kind of an atmosphere of hostility which doesn't need to exist.

I am not suggesting that it will be possible for this or any other committee to put together the kind of bill that will be universally embraced by everybody in the House. I do want to suggest, however, that I appreciate your efforts to do so to the extent that it is possible, and I would like to pledge to you what cooperation and help I might extend as the majority leader.

It definitely is not my purpose just to retard any legislation. I don't think the problem is going to be solved just by rejecting all efforts to reform our hodgepodge system.

There is a very real problem that exists. As the members of this committee are aware, its dimensions are growing; they are not shrinking.

I don't know how many undocumented workers or illegal aliens there may be in this country. Estimates vary. The committee probably has as wide a range of estimates as one might expect. I don't even know how many there are in my community. I know there are more than is commonly supposed; there are more than I believe were there 2 years ago. I have not counted them. It isn't possible to count them. They don't come forward to be counted. They are furtive; they are fearful. They are more often the victims of crime than perpetrators of crime—those in my area.

I would suggest to the gentleman from Florida that while I am fully aware there are some undesirable people who have come illegally into this country, there are also a preponderance, in my personal experience, of very well motivated people who want only a job, who are unable to find any kind of productive work in their native countries. In many cases this is Mexico and those Central American countries lying south of Mexico through which some of these people came to the United States. They have come here as to the promised land, seeking only the opportunity to exchange the work of their hands to the sweat of their backs or their brows for



wages, which they can exchange for food and a livelihood for their people.

For the most part I think they are not bad people. For the most part I think they are decent and good people. But they are frightened people. They are victims of unscrupulous people, branded in my State coyotes, who make a profession of preying upon the misery of the undocumented worker. They bring these people in furtively and illegally in truckloads. They find places for them to live, in habitations too crowded for human health and human safety. They provide for them foodstuffs at prices outrageously high. They arrange bogus credentials for these people at a price outrageously wrong. They act as their employing agents and get jobs for them using these bogus credentials.

That parasitic group in our society are people for whom I have utterly no sympathy whatever, those who exploit the misery of the undocumented worker.

As a result of this, there has grown up a subculture in many of our American communities—many of them in California, many of them in Texas, Florida no doubt, and perhaps in Arizona and New Mexico.

But there are 2,000 miles of border, and there just isn't any way in which we could employ enough border patrolmen effectively and adequately to control those 2,000 miles.

Surely we never would want to erect the kind of a physical barrier between our country and our neighbors to the south that is epitomized in the Great Wall of China which, in an effort to protect a culture from the intrusion of alien influences, actually insulated that country and dwarfed its capacity to grow. Surely we don't want to erect the kind of physical barriers that characterize the line between East and West Berlin. We are not that kind of country. We are not that kind of neighbor. There isn't any physical way that we can adequately patrol the 2,000 miles of border that we share with our neighbor, Mexico.

So what can we do about it? How can we at least reduce, if not eliminate, these social problems that come in the wake of a flood of people who come to our country, most of them unable to speak the language, most of them ready to be victimized if it means only that they can get a job and work, many of them truly exploited. Because of their vulnerability to exploitation, they do sometimes depress wages for local U.S. citizens because they will work for less than the minimum wage and in conditions that wouldn't be tolerated by an American citizen.

Well, let me address myself to only three phases which I know are very difficult of solution.

The first is the question of amnesty. The second is the question of employer sanctions. The third is the question of a guest worker program.

With regard to amnesty, I believe that some form of amnesty must be extended. I want to commend the committee for its efforts to create an honorable system of amnesty. I do not believe that a blanket amnesty, available to everyone indiscriminately, who may have been able to evade or avoid the law for a given period of time, is necessarily the right way to go.

The right to be a permanent resident of the United States ought to carry with it some concomitant sense of responsibility. I am not suggesting that in order to qualify for this amnesty one must pass a difficult examination, nor am I suggesting that someone has to prove a great many things. But I think as a minimum we ought to require that people come forward and identify themselves in order to qualify for the amnesty. Let them demonstrate that they are able to hold a job and have held a job and are not likely, therefore, to be wards upon the State and recipients of the kinds of welfare costs that would burden our country if they are without marketable skills.

Third, that they are without serious blemish in infractions of the law, that they haven't been guilty of serious legal infractions. I'm not talking about a parking ticket or an automobile accident that didn't result in injury. I am not talking about petty things. But I am talking about the kinds of things that would make a citizen suspect, someone we really wouldn't want as a permanent citizen of this country.

The final qualification I think we ought to apply is a demonstrated willingness to at least try to learn the language. I think we ought to require that they make an effort to learn English and, if they have children, that they make a very earnest commitment that their children will learn English.

I believe in bilingual education. I do not believe in it, however, as a crutch. I believe in it as a bridge. If it is used as a crutch to permit children of an alien culture and an alien tongue to cope through school without learning the language of the marketplace in the United States, we do those children no favor because we have not equipped them with what is necessary for them to be productive residents of this country.

So it seems to me that those are the basic requirements that I'd like to see placed as minimum requisites for an amnesty eligibility.

Beyond that, I would extend the amnesty, because I think it is very important that we make these people feel that there is safety for them if they come forward and work with the Government of the United States, that they no longer have to be furtive, that once they have come forward and identified themselves they no longer have to fear anything, that they no longer have to tolerate being victims of crime for fear that if they report those crimes they will be unceremoniously deported from our country and the perpetrator of the crime go free.

The second thing I'd like to address myself to is the question of employer sanctions.

I would encourage the members of the committee to take Bob Garcia up on his offer to see if there is a way in which those who represent the Hispanic caucus could provide safeguards in any system of employer sanctions against the inadvertent and unintended discrimination against American citizens, U.S. citizens of Hispanic origin. That is a very real fear among many of our citizens. Perhaps one cannot comprehend it fully unless he or she is of the Hispanic culture.

Kika de la Garza, our colleague, explained it to me this way. He said, "Jim, you and I are going to apply for a job. There's one job. Let us assume that you and I are equally well qualified for the job.



The employer, if he is fearful of sanctions against employing an illegal alien, will choose you, Jim. He will just take the safe way out, because he will look at me and he'll think, 'There may be an outside chance that that fellow is a wetback.'"

That's true, I guess. And those of us who are maybe Anglo-Saxon, Irish, Scotch, Germanic, whatever other cultures that exist, and have surnames that do not suggest that we may have come recently from one of the countries which produces most of the undocumented workers, do not stop to realize that there is an unspoken reticence probably lurking in the minds of a prospective employer which makes him, perhaps even unconsciously, reject the applicant for the job who has an Hispanic surname or who may appear to be of an Hispanic culture. And that really isn't fair.

So if we can work with the Hispanic caucus and with others to see if there is a means of developing a guarantee that will not invade the individual freedoms of our working force of American citizens, I think it would be worth doing.

Finally, with regard to a guest worker program, I am aware of apprehensions that exist among many people about a revival of the bracero program or something of that general character. There are good things to be said for the bracero program, as a matter of fact, as well as bad. It provided a minimum standard of treatment for those people who came here. It required that they leave after their period of employment had been completed. It helped our relations with the neighboring country of Mexico and, indeed, assisted the economy of Mexico, because we worked as partners with the Government of Mexico in the creation of the program. Mexico assisted in the recruitment of those people who came under that program.

There is a very interesting corollary between the number of people who came legally in the guest worker program and the number of people apprehended as illegal entrants into the United States. From the beginning of that program in the late 1950's, as I recall, the number of people illegally apprehended in this country and eligible for deportation was running about 200,000 annually. The first group admitted legally amounted to about 30,000—that is not counting servants—and then those numbers changed gradually, but inexorably, and they had an undeniable relationship one to the other.

In the last year of the program, some 300,000 or 400,000 people were admitted legally as guest workers, and the number of those apprehended as illegal entrants into our country has dwindled to maybe 30,000. The positions are reversed.

If we assume, as I think we must, that whatever we do there are going to be a certain number of people coming into this country, at least across that 2,000 mile border of which I have already spoken, isn't it better that they come under conditions agreed to by their country and by our country, that it be as a result of a joint partnership arrangement worked out between our countries, that we have the assistance of our neighbors in Mexico and the Government of Mexico in seeing to it that they return when their period of employment contract is over, and that they not be subjected to mistreatment, that they have some court to which they can go to see to it that they are not exploited, that there are certain minimum health standards and certain minimum education standards

for their children, and certainly minimum pay standards and living standards provided for them.

Beyond that, it seems that it would be a very beneficial thing in our relations with Mexico if we were to dignify them by asking them to sit down and help work out the details of this kind of program with us rather than our just unilaterally deciding the details and forcing it upon them as a *fait accompli*.

Well, that's about the extent of my suggestions, Mr. Chairman. I would encourage the committee to think upon those ideas. Whatever you do isn't going to please everybody, but I am grateful to you and the members of your committee for the efforts you are extending. I encourage you to report out a bill early enough that it can go to the floor not in a last-minute crush, and to that end I would offer you my help.

Mr. MAZZOLI. Mr. Majority Leader, thank you very much. I want to thank you for a very well prepared statement, even without notes, which is phenomenal. But also I thank you for your statement, which I do appreciate, that you will be disposed to allowing our bill to reach the floor. I think it has been said by my colleague, Senator Simpson, many times that the bill can go away but the problem will not go away. You have said that today. I suggest that the problem cannot be solved by ignoring it and by sidetracking legislation, even where the legislation is admittedly imperfect.

In an effort to try to improve an imperfect piece of legislation, the majority leader has put his finger on three elements which, of course, are the centerpiece of the bill and cause a considerable amount of torment to our members.

Let me perhaps start from the last and work back.

On the proposal to allow workers from abroad to come in for temporary periods of time, the people who helped draft this bill were faced with the choice of either going for a new program—it's called a guest worker program, as the gentleman said—or using something which is on the books already, the H-2 program, through which Jamaicans and people from the Caribbean enter New York and other States in the union to do various agricultural tasks for a limited period of time and then go home. So we either create a new program or we try to remodel, refresh, and enhance the existing program. We elected the latter course.

I will ask the gentleman: Would he believe there is a potential solution to the problem lying within the H-2 mechanism, or is the gentleman, having studied the program, of the belief that we do need to have a more full and more expanded program of temporary workers?

Mr. WRIGHT. I think in the long run the latter might be desirable, to create a new program designed expressly for present needs. But I appreciate the problem that confronts the committee. There is an existing mechanism which is much easier to use, even if you refine it to some degree.

I would suggest only that we try as best we can to ensure that those admitted as guest workers be given the dignity of being recognized as guests of this country, that we do what we can to make certain that they do not take jobs for which U.S. citizens are available and ready to work, and that we have the cooperation of the country from which they came, in this case Mexico.



I am not prepared to discuss with any sense of authoritativeness people coming from other countries. I think I do know a little bit about people coming over from Mexico and a little bit about the history of our relations with the Government of Mexico.

I would try to invite them to come and be a part somehow in the mechanism. You might create a mechanism for the formulation between our State and agricultural departments, let us say, and the equivalencies in the Republic of Mexico for changes and any expansions that might occur in this program. You might just want to go that far.

Even that, it seems to me, would do good things for the state of our relations with Mexico.

Mr. MAZZOLI. Will you excuse me?

Mr. WRIGHT. Surely.

Mr. MAZZOLI. I appreciate what the gentleman has said, and one of the problems we had in electing to go with an enhancement and modernization of the H<sup>2</sup> program was the fact that the earlier guest worker program had become the victim of perhaps its own success. It became too big and cumbersome and people didn't go back, and there were evidences of mischief on the part of some of the employers and mishandling of the people. The gentleman having lived in Texas where this program was at its zenith, do you believe there are ways to deal with those problems to keep a new guest worker program from declining and becoming the kind of ineffective and really mischievous program that was known as the bracero program?

Mr. WRIGHT. Well, I have to believe that there are. As far as the bracero program is concerned, at its zenith it was the second largest producer of national income to the Republic of Mexico. It assumed an importance of that magnitude to that country. And because jobs were available legally by working with their own government, their own local officials, they didn't find themselves so tempted to flout the law.

I think it can be done. I don't minimize the difficulties.

Mr. MAZZOLI. I thank the gentleman for his suggestion. It is certainly an interesting proposal.

The Chair's 5 minutes have expired.

The gentleman from Florida is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

The gentleman from Texas has certainly been very cogent in presenting the areas which are of greatest concern. I think, however, that Congressman Garcia to some degree put his finger on the issue when he said that unfortunately there are places in this country which have different kinds of problems.

I think that is one of the aspects of this particular legislative inquiry that goes begging to some degree. You yourself, Mr. Wright, have indicated that you are very familiar with the problems relating to the Texas-Mexican situation, having lived through many, many political years. And I am not so sure that ultimately we can address all these problems in this one particular vehicle, they being of such different nature and quality.

But I would like to ask you just a few small questions relating to those which are of gravest concern to me.

Even assuming that we were to adopt the suggestions that you made with reference to amnesty and were able to come out with some form of amnesty provisions that most of the Members of Congress could live with and felt were fair to their own constituents, how could you prevent, literally prevent, the problem of having communicated to the world Congressman Garcia's thought that we should make it plain that it's a one-time shot for amnesty? How could you communicate to the world that in fact this wouldn't happen again 4 or 5 years down the road when all the people who are grandfathered in on the amnesty communicate to their home country and their relatives that they have attained a large degree of legality?

Wouldn't that in effect provoke additional types of new waves of refugees coming here for the purpose of attempting to get in under a new program which, even if it didn't exist, they assumed would come at sometime down the road in the future? Isn't that a major concern no matter what we do to make amnesty fair and legitimate and protect the interest of the United States?

Mr. WRIGHT. Larry, I think it is. It is a legitimate concern. I don't believe there is any absolute way in which we can guarantee that nobody is going to get the impression we will do it again, either as suggested by Mr. Garcia or in the manner which I have suggested.

I think we ought to try to do that. We should try to say this is one time, that we are doing this because these people have been here for certain periods of time and some of them qualify to remain. And all those who qualify to remain, who haven't done anything illegal in our country and are well-motivated and want to stay here and are trying to accustom themselves to our laws and abide by our laws and learn our language and teach their children in ways that will make them productive residents of the United States—we want to legitimize them, and we are not going to do that again; we don't expect to do that again.

I don't know that we can give a guarantee that we won't have to do it again sometime 50 years from now. I don't know the answer to that. It would be foolish for us in this Congress to try to bind some future Congress.

Mr. MAZZOLI. If the gentleman would yield to me for a moment—he still has a few seconds left. In the GAO report which was done last year, they circulated two countries who had problems like ours, Canada and France, to get some idea of what the response would be to an amnesty offer.

Interestingly enough, in Canada where they suspected some 200,000 would qualify, a total of 20,000, only 10 percent, actually put themselves forward for this activity. In France where they expected at least 300,000 to qualify, there were a total of 80,000 who took advantage of the offer.

So there are those who testified before the committee last year who say the problem is not too many people coming out for it, but that there may be too few. You will have to have an outreach program to get the folks at least in the position where their bona fides would be examined.

So it is an interesting point. You see it both ways, both the fact that there might be too many, and the evidence is in some cases there may be too few.

So I thank the gentleman for his question.

Let me take the prerogative of the Chair and give myself perhaps 2 minutes and then yield to the gentleman from New York who has now joined us.

Let me ask a question on a third point that the gentleman from Texas brought up, that dealing with employer sanctions, whether the gentleman is of the belief that we could, by enforcing the labor laws alone, absent any activity in this field of employer sanctions, solve the problem he very aptly described of people who exist in an exploitable condition and are exploited as a result of that?

Mr. WRIGHT. No, I think it would solve part of the problem but I don't think it would solve all of the problem. While I believe it should be done as a protection for all human beings, I think it would be expecting too much to assume that an effort to enforce those laws more effectively would solve the entire problem. I just don't think it will.

Mr. MAZZOLI. Let me ask the gentleman a second question. One of the reasons that the authors of our bill put in the paperwork requirement for all employers—that is, every employer has to check the bona fides of all prospective employees—was to guard against the fear the gentleman brought up, which is discrimination.

Would the gentleman have any belief on what would happen if you removed the paperwork responsibility and left the employer sanctions and targeted it, in a sense as we have done, by having it apply not to small employers but to large employers? How would the gentleman feel?

Mr. WRIGHT. I think if you are going to do it, it really ought to have some cutoff. There are, throughout the United States, as all of us are aware, an awful lot of small business people to whom it becomes just terribly burdensome if you require a lot of paperwork. And they are afflicted with an awful lot of paperwork as it is. Today the small operations—family businesses, small retail establishments, and things of that kind—if required to do a lot of additional paperwork, I think would probably find it onerous and costly and troublesome.

Mr. MAZZOLI. I thank the gentleman, and I recognize for 5 minutes the gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman, and I welcome the distinguished majority leader. I thank him for his remarks with respect to moving this bill. We are starting early in the first session and not in the second session as we did in the last Congress. I hope this will leave time for a full dialog and impetus of the kind to move the bill. I would secondly like to thank you for your comments on legalization, and I'm sure that will be given serious consideration.

With respect to employer sanctions, which are viewed by the authors as the key to enforcement of this legislation, if I understood your testimony it was that you would hope we would work out with Members of Congress who are vitally concerned with this issue safeguards that would do the best job possible to see to it that dis-



crimination does not occur, or if it does occur we discover it and root it out and punish it.

Is that a fair statement?

Mr. WRIGHT. That is exactly right, and not only that it be punished. That isn't really so much the problem in my opinion, willful discrimination based upon a malicious intent; rather, subconscious discrimination based on an impulse of self-protection. I think the fear may probably exist among employers that would be almost subliminal that they might be unwittingly employing some alien if they give the nod to somebody with an Hispanic surname, let us say, somebody named de la Garza instead of somebody named Wright; somebody named Garcia instead of somebody named Fish.

That's the kind of thing which it is very hard for a government to guard against, but I think it's part of human nature.

Mr. FISH. Well, I thank our colleague.

Mr. MAZZOLI. I thank the gentleman from New York.

The gentleman from California, our ranking member, has joined us.

Mr. LUNGREN. Thank you, Mr. Chairman. I'm sorry I wasn't here to hear your testimony, but I am certainly interested and I will look at it.

One of the things I am pleased about is that you have spoken so forcefully for the need for us to have some ongoing consultation process with Mexico, because I think one of the major problems we had with the old bracero program, in addition to maltreatment of many of the people who were involved, was a lack of close cooperation between ourselves and the Government of Mexico. We started the program without their consultation; we got rid of the program without their consultation. We have done many things in terms of immigration without consulting our closest neighbors and those who are most immediately impacted.

And I certainly will be working on this committee to see if we can somehow have a formal consultative process as part of this bill. And I know you have, in comments we have had together, shared that feeling, and I look forward to working with you on that particular part of the project.

Mr. MAZZOLI. I thank the gentleman.

I thank the majority leader.

Mr. WRIGHT. Thank you very much, Mr. Chairman.

Mr. MAZZOLI. The gentleman is excused and I appreciate your help.

We have three other Members here now—Congressman Towns, Congressman Shaw, and Congressman Brown. Would you gentlemen mind stepping forward as a panel rather than individually? Would that suit each purpose? Would that be all right? We do have a problem with the Attorney General's time, and we want to make sure he isn't overly encumbered.

Why don't you all come forward, and when Congressman Brown comes in he can just join the panel.

Gentlemen, we might proceed. In the order we had them listed here on our chart, we had Congressman Brown, then Congressman Shaw, and Congressman Towns.

So perhaps, Clay, you might proceed. And without objection, your statement will be made a part of the record, and you may proceed



however you wish. In view of the fact that we are short of time, we'd appreciate it if you'd take about 5 minutes.

**STATEMENTS OF HON. E. CLAY SHAW, JR., REPRESENTATIVE FROM THE 12TH DISTRICT OF FLORIDA; HON. ELDOLPHUS TOWNS, REPRESENTATIVE FROM THE 11TH DISTRICT OF NEW YORK; AND HON. HANK BROWN, REPRESENTATIVE FROM THE FOURTH DISTRICT OF COLORADO**

Mr. SHAW. Thank you, Mr. Chairman. I will submit the written statement and ask that it be included as a part of the record.

We will be hearing from and we have heard from many of the special interest groups, and of course there is nothing wrong with special interest groups being heard from, and part of our job here in the Congress is to weed out what is best for the American people.

I'd like to for just one moment, however, point out the mail that I have received in my office with regard to this particular bill. It is a vitally important bill.

I have said before and I'll say again, I think one of the tragedies of the last Congress is that the tremendous job that this subcommittee and our full Committee on the Judiciary did in turning out a meaningful immigration bill, the first one in 30 years, did not result in a bill being passed by the Congress. The treatment this Congress gave to that bill in debating it, really only after dark, and opening it up to some 300 amendments, I think was nothing short of shabby and nothing short of a tragedy.

We have a community in south Florida—I think all of you gentlemen have traveled there; several of us were there just last week—and we know the tremendous problems that that community has experienced in digging its way out from under the problems of illegal immigration, and the economic and the criminal and the social problems that that brings to a community. It can ravage a complete area, and it certainly has put a tremendous hardship on the people of south Florida.

I guess the good news, though, is that the people from south Florida are digging out from under it—despite the fact that it appeared a year or 2 ago to be almost an incurable situation. The good people of south Florida are coming out of it. And you can see that the economy is moving, the jobless rate is beginning to fall, and for the first time in Miami and south Florida we are seeing the crime rate fall significantly.

I would like to, if I may, just read excerpts from some of the letters that I have received:

DEAR CONGRESSMAN: We did have a big disappointment that the Simpson-Mazzoli bill wasn't strengthened and passed by Congress. I wrote to Tip O'Neill, Peter Rodino and Mr. Wright and others for a strict reform bill. We are so disappointed.

DEAR CONGRESSMAN: I have lived in Florida since 1962. Back then I used to be teased about being a "walking Chamber of Commerce" for Fort Lauderdale. Today I want to leave here because I think what happened to Miami is creeping up here. I find myself fearful, angry, and frustrated and surely that is no way to live.

DEAR CONGRESSMAN: I fear that our problems here are being forgotten by the Congress.

DEAR CONGRESSMAN: It is frightening that Congress can't understand the danger of the situation and move quickly to drastically reform our present laws.

The tone of these letters goes on and on and on. I would remind the members of this committee, as well as the entire Congress that the special interest group that we are here to represent is a cross-section of the American people. The cross-section of the American people is crying out:

Again regain control of our borders. Control the illegal immigration coming into this country. We are a sovereign Nation, and as a sovereign Nation we must control our borders.

I thank you, Mr. Chairman.

[The complete statement follows:]

STATEMENT OF HON. E. CLAY SHAW, JR.

One of the greatest disappointments of my first term in office was the failure of the 97th Congress to enact immigration reform legislation. I must say it certainly wasn't for a lack of trying. The efforts of this Subcommittee, and in particular the Chairman and Ranking Minority Member, were tremendous. And since illegal immigration is cited as the most important problem in my district, it was particularly heartening to see so many members so dedicated to solving the problem.

Yet, despite these vigorous efforts, the bill did not pass and many of us in Congress were very disappointed, but we were not alone in our disappointment. In December and January I received many, many letters from my constituents regarding the demise of the Simpson-Mazzoli bill. Their disappointment and frustration came through loud and clear. And every day I continue to get 20-30 cards and letters from people expressing similar sentiments. Here is a sampling of what some of the residents of the 15th district of Florida have had to say—

"DEAR CONGRESSMAN: We did have a big disappointment that the Simpson-Mazzoli bill wasn't strengthened and passed by Congress. I wrote to Tip O' Neill, Peter Rodino and Mr. Wright and others for a strict reform bill. We are so disappointed, I am calling quits. At my age and with an ulcer, why should I try to help?"

"DEAR CONGRESSMAN: I have lived in Florida since 1962. Back then I used to be teased about being a 'walking Chamber of Commerce' for Fort Lauderdale. Today I want to leave here because I think what happened to Miami is creeping up here. I find myself fearful, angry, and frustrated and surely that is no way to live."

"DEAR CONGRESSMAN: I fear that our problems here are being forgotten by the Congress."

"DEAR CONGRESSMAN: It is frightening that Congress can't understand the danger of the situation and move quickly to drastically reform our present laws."

And though most of the letters expressed disappointment, all urged that we in Congress do not give up. One constituent writes:

"Please never give up the fight for a strict, firm immigration bill that will serve our beautiful country and allow her to be strong and healthy and decent."

On behalf of these people, I wish to thank you for making immigration reform your number one priority. It has been my pleasure to let all these people know that the bill has been reintroduced, is moving forward, and that there is indeed cause for hope.

I pledge my personal support and will assist in any way I can to insure that an immigration reform bill becomes law this Congress.

As has often been said, the bill is not perfect. Personally I would like to see the amnesty section dropped entirely from the bill. Also I believe that the bill would benefit from the inclusion of an Article I court provision which would go a long way toward providing a timely and fair method of adjudicating deportation, exclusion and political asylum cases.

Also the bill isn't the end-all. It won't solve all our immigration problems with one swoop. I still feel very strongly about the need for emergency power legislation which would give the President the power necessary to act quickly and decisively in an immigration crisis. These provisions are not contained in the bill.

But though the bill won't be the end-all, it is an urgently needed beginning. And aside from the concerns that I have with the bill, I still feel that the most important thing right now is to get this bill moving as quickly as possible.

Again, on behalf of myself and the concerned citizens in my district, I want to thank you for remaining committed to the cause. With such dedication, I feel certain we will see a successful conclusion this year and that will be victory, not only for the many committed Members of Congress who have worked so hard, but for the millions of Americans who have put their faith in us to solve the problem.



Thank you.

Mr. MAZZOLI. I thank the gentleman for that statement.

The gentleman, while not a member of our subcommittee, has been extremely active in participating with us in some of our hearings and activities, and has done excellent work just in his very first term in Congress last year.

We now welcome a new Member of Congress. It is our first opportunity to have him in our hearing room. We welcome you, Congressman Towns, and hope you have a long and very happy and successful tenure in Congress.

Mr. Towns. I am delighted to be here, Mr. Chairman. As a new Member of Congress, I am very pleased to have this opportunity to share my views with you on the Immigration Reform Act, H.R. 1510, and to hopefully contribute to the debate on this issue in the 98th Congress.

The employer sanctions provision of this bill has severe implications for persons of color in this society, like my constituents. Workers who look or sound foreign will be easy targets for employment discrimination. Employers, rather than chance the possibility of hiring an undocumented alien, will choose to hire someone who can safely be considered an American. Undeniably, Hispanics and Caribbean blacks, who already constitute an almost permanent class of unemployed and underemployed persons, will face additional hiring discrimination.

Hispanics, in particular, face a selective assumption by the general public that they are illegal aliens. A classic example: The raids on job sites during Operation Jobs. The employees targeted during these raids were dark-skinned and Hispanic-looking. Even Puerto Ricans, who comprise the majority of my Hispanic constituency, are not immune from such bias.

For example, in 1980 a Puerto Rican citizen was denied readmission to the United States after returning from Puerto Rico. The basis for this denial rested on the assumption by an INS official that the person spoke with a Guatemalan accent. Despite the fact that Puerto Ricans have been U.S. citizens since 1917, this citizen was forcibly deported to Guatemala where he was jailed for some weeks before his family could secure his return to the United States. This man's only offense was that he looked foreign. Employer sanctions will only serve to exacerbate this kind of national origin discrimination.

In addition, employer sanctions success is clearly open to question. A study of some 19 countries found that employer sanctions was not an effective deterrent to stemming the illegal employment of aliens. Given this finding, one must question whether such a provision is worth the devastating human costs that minorities will experience as a result of employer sanctions.

As a member of the caucus task force on Haitian refugees, let me address the adjudication procedures and asylum section of this bill. The independent structure, while a vast improvement over the Senate's provisions in this area, still poses serious problems in the area of due process protections.

Mr. Chairman, I could go on and on, but in my area we are extremely concerned because we feel that certain portions of this bill

will be discriminatory. We know that it is very difficult to come up with a bill that is going to take care of everything and that is going to take care of everybody. We recognize the amount of time and the hard effort that your committee has put into it. But I'm hoping that before you continue to move forward that you will sit down with the Hispanic caucus, sit down with the Black Caucus, and people that come from areas that have a very serious immigration problem, and make certain that their input goes into this bill.

Thank you very much for the opportunity to testify.

[The complete statement follows:]

#### TESTIMONY OF HON. ED TOWNS

Mr. Chairman, I am aware that this subcommittee devoted a lot of time and energy to the issue of immigration reform in the 97th Congress. As a new member of Congress, I am very pleased to share my views with you this morning on the Immigration Reform Act, H.R. 1510 and to hopefully contribute to the debate on this issue in the 98th Congress.

H.R. 1510 represents, for the most part, a fair and responsible approach to immigration reform. The legalization provisions, in particular, are an important step forward in bringing undocumented aliens out of their shadowy, frightened existence. I am troubled, however, by the potential discriminatory impact of an employer sanctions proposal. Without appropriate mechanisms for monitoring, discrimination in hiring will inevitably occur for hispanics, West Indians and others who "appear" foreign. In addition, the recent treatment of Haitian and Salvadoran asylum applicants raises serious questions about whether the new streamlined adjudication procedures will offer sufficient protections against administrative abuses.

Mr. Chairman, 40 percent of my Congressional District is Hispanic and many Caribbean blacks also live in the area. The employer sanctions provision, of this bill, has severe implications for persons of color in this society, like my constituents. Workers, who "look or sound" foreign, will be easy targets for employment discrimination. Employers, rather than chance the possibility of hiring an undocumented alien, will choose to hire an Anglo, someone who can safely be considered an "American". Undeniably, Hispanics and Caribbean blacks, who already constitute an almost permanent class of unemployed and underemployed persons, will face additional hiring discrimination.

Hispanics, in particular, face a "selective assumption" by the general public that they are illegal aliens. Witness the raids on job-sites during "operation jobs". The employees targeted, during these raids, were "dark-skinned and hispanic-looking". Even Puerto Ricans, who comprise the majority of my Hispanic constituency, are not immune from such bias. For example, in 1980 a Puerto Rican citizen was denied readmission to the United States after a return trip from Puerto Rico. The basis for this denial rested on the "assumption" by an INS official that the person spoke with a Guatemalan accent. Despite the fact that Puerto Ricans have been U.S. citizens since 1917, this citizen was forcibly deported to Guatemala where he was jailed for some weeks before his family could secure his return to the United States. This man's only offense was that he "looked foreign". Employer sanctions will only serve to exacerbate this kind of national origin discrimination.

In addition, employer sanctions' success is clearly open to question. As this committee knows, GAO's study of some 19 countries found that employer sanctions was "not an effective deterrent to stemming the illegal employment of aliens". Given this finding, one must question whether such a provision is worth the devastating human costs that minorities will experience as a result of employer sanctions.

I am aware that Representative Gus Hawkins (D-CA) authored several amendments last year, in the Education and Labor Committee, to guard against this kind of discrimination which I have just discussed. While these amendments have been previously opposed as being too burdensome, I would hope that this committee would work closely with Rep. Hawkins to ensure that the problem of employment discrimination, caused by the employer sanctions provision, is adequately addressed in this bill. To assist in this process, I have asked the General Accounting Office to prepare a report on the existing civil rights remedies available to persons who would suffer discrimination resulting from the sanctions law. I hope that the information generated by this report will prove useful to this committee.

As a member of the Caucus Task Force on Haitian Refugees, let me address the "adjudication procedures and asylum" section of this bill. The independent struc-



ture, while a vast improvement over the Senate's provisions in this area, still poses serious problems in the area of due process protections.

Summary exclusion proceedings are clearly open to abuse of discretion by INS officials. No assurances are provided that an alien, specifically a Haitian or Salvadoran, will ever be informed of their right to claim asylum. A notice requirement is not authorized in this legislation. Those, who oppose notice to an alien of their right to claim asylum, presume that legitimate asylum-seekers will openly state their desire to claim asylum. The realities of repression simply do not support this presumption. UNHCR protection officers have repeatedly stressed that persons, with legitimate asylum claims, often have equally valid reasons for not voicing an asylum declaration immediately. They often fear reprisals against families they left behind; also, distrust of government officials is a way of life in most repressive countries. Consequently, this combination of factors may lead asylum-seekers to be hesitant about immediately admitting persecution to the first American immigration official they see. In effect, a notice requirement is the only way to ensure that those fleeing persecution, from our Western Hemispheric allies, will have an adequate opportunity to assert their asylum claim. The importance of notice has also been supported by our Federal courts. In two Federal District Court decisions involving Salvadorans, *Orantes-Hernandez v. Smith* and *Nunez v. Boldin*, INS was required to give aliens advice of the right to apply for political asylum in order to effectuate the right.

The elimination of judicial review of asylum claims raises the spectre of court-stripping. As you know, the members of the Congressional Black Caucus are opposed to the removal of Federal court jurisdiction as a matter of principle. Even limitations on judicial review, under the administrative law judge system, is problematic given the history of treatment for certain asylum applicants. An appeals board, consisting of Presidential appointees, is no guarantee of a neutral arbiter for the asylum claims of Salvadorans or Haitians.

Finally, let me encourage you, Mr. Chairman, to fully examine the administrative remedy of "extended voluntary departure". In reviewing the hearing record, this issue is the one major asylum policy area which was not explored during the committee's extensive hearings last year. As you are aware, the plight of Salvadorans and Ethiopians, in this country, has centered around the use of "extended voluntary departure". The turmoil in Central America, regrettably, seems to be increasing. This situation suggests that Guatemalans may soon join the stream of Salvadoran refugees into the United States in increasing numbers. Extended voluntary departure should be explored as a humane way of dealing with the "country of first asylum" issue.

Again, thank you for this opportunity to express my views and I hope to work with you, Mr. Chairman, and other committee members toward an immigration reform package which is not discriminatory and which we all can support.

Mr. MAZZOLI. Thank you very much, Congressman, and we certainly shall do that.

The chair will yield itself 5 minutes and start the round of questions.

When we announced just the other day this series of hearings—7 full days of hearings over the next 3 weeks—people thought I must have had some sort of temporary sunstroke or temporary amnesia or something, because they said, "Look, you had a tremendous record built in the last Congress. You talked to everybody repeatedly."

But in my judgment, Congressman Towns, the whole reason we are here as a panel is to try to make the product as perfect as we can make it, which means that advice from the Black Caucus, the Hispanic caucus, and other groups is a very important part of what we are doing.

While, as the gentleman to your left said, we have to legislate on what we believe to be in the interests of the country at large and not so-called special interests, each one of us is a member of several special interests. In that sense, we have to hear from all people and all organized groups about this bill.

Let me ask the gentleman, because his testimony dealt in part with asylum petitions, assuming that we don't get a bill, is the situation the gentleman and his constituents face today better than the bill would offer by way of our substitute to the system of adjudicating asylum?

Mr. TOWNS. Would you ask the question again?

Mr. MAZZOLI. I'm sorry. Would the gentleman's constituents be better off today with the existing law dealing with asylum or with this law that we put forth in H.R. 1510?

Mr. TOWNS. It would make them a little better than this law. But I think the point is when we talk about a little better, we need to try to make things as perfect as we possibly can. I think that is what we are really talking about.

Mr. MAZZOLI. I think the gentleman would probably agree, then, that the House version, while not as perfect as we hope to make it, is still quite a bit better than the Senate version.

Mr. TOWNS. I would agree with that as well.

Mr. MAZZOLI. Thank you very much.

The gentleman from Florida, Mr. Shaw, I would again like to commend you on the active role that you have played in the subcommittee work and the full committee markup. Of course, that was a critical element.

Is the gentleman able to find in here seeds of a bill that would be worthy of strong support by all Members of the Congress? Are there elements in here that the gentleman feels should be excised or elements added? Or is the gentlemen of the belief, as the Chair is, that you can never solve all the problems but you try to solve as many as you can?

Mr. SHAW. I think in solving as many problems as you can you are going to come up with some parts that I'm certainly not going to like, and I think the majority of people that I represent are not going to like. The amnesty provisions still trouble me, and I intend to oppose that provision when it gets to the full committee. However, I understand the real practicalities of getting the bill to the floor and the passage of a bill.

I think one of the things we are going to have to be extremely cautious of is that we do not put an unfair burden upon the States who are going to be affected by a possible amnesty provision.

We had a long debate on that in the last session, and I think we came up at least with a middle ground that would at least ease the financial burden on States such as my own home State of Florida.

As I say, I again plan to oppose the amnesty provision, both here and on the floor of the House, should we have a rule that would allow us to do so. However, in doing so, I am still mindful of the fact that the bill, if passed, and even though it is not perfect, and even though there are provisions that I have very strong feelings about, would certainly have us so much better off than we are now. And if this bill were to have passed the full House in the last session in the form it came out of the committee, we'd be a lot better off.

Mr. MAZZOLI. I thank the gentleman.

I yield 5 minutes to the gentleman from California, our ranking member.

Mr. LUNGREN. Thank you, Mr. Chairman.



Congressman Towns, you mentioned a point that troubled many of us when we started work on this bill some time ago, that is, that we not do anything that would allow more discrimination than now exists and hopefully would eliminate some of the discrimination with respect to the Hispanic population. And you say in your testimony:

"Rather than chance the possibility of hiring an undocumented alien, employers will choose to hire an Anglo."

The bill that we have before us, much like the bill that we had all of the last year, requires an employer to verify the employment eligibility of any prospective employee regardless of appearance. In fact, when we did that, as an effort so that there would not be discrimination, we ran the risk of being criticized on the other hand that it is overly burdensome because it requires the employer to do it for all prospective employees. And you run into the question of people saying, "Well, what you are doing is setting up a system of identification for all Americans or all people in America." But we felt the verification on requirement was the only way you could eliminate the possibility of discrimination if you were going to have an effective control at the employment nexus.

Any employer who would fail to do that, that is, require those eligibility documents from any prospective employee, would be in violation of the law.

Then we have some paperwork requirements that in essence protect the employer. If the employer makes the request for the documents, looks at them—and on their face they look good—signs a document that says he has reviewed them, and has the prospective employee sign a document saying that he can legally work in the United States, that acts as a defense for the employer against the prosecution that he violated the law.

With that being the construct of the bill, can you give us some guidance as to what else you think we ought to do at that point in time to stop the possibility of discrimination flowing from this act?

MR. TOWNS. First of all, let me say I have a lot of questions about that because some businesses are not going to be able to do all these kinds of things. I'm talking about the small businesses in particular. So what they would do is take a chance, by making certain the person looks OK and sounds OK. But the point I am making is if the person happens to be black or happens to be Hispanic, they would do a double-double check, and when there is a question they would just eliminate hiring the person. And that's the point we are trying to make.

I am saying that they recognize that this will not be able to be enforced across the board in every instance, and when there is doubt they would not hire the Hispanic person.

MR. LUNGREN. Let me ask you this: If you hypothetically accept as a given, that if we are ever going to control the immigration problem in this country, we are going to have to do something with respect to employer sanctions, how else would you suggest we police that other than by this mechanism that we have in the bill?

MR. TOWNS. Other than that?

MR. LUNGREN. Yes.

MR. TOWNS. First of all, I don't think that provision in terms of the way it is in the bill is the way to go. That is what I am really

saying to you. We are talking about small businesses. Many businesses will not go through that whole process.

Mr. LUNGREN. We have an exemption for the paperwork requirements for those who have three or less.

Mr. TOWNS. We understand that. We're talking about even above three. Rather than to take a chance or to go through all the paperwork and do the kind of research and get involved in the legality, they would just not hire the person when in doubt. That's what I'm saying. In other words, I disagree with the fact—

Mr. LUNGREN. I understand that. I guess what I'm asking is: What is the alternative? Do you have an alternative for us? I don't want to put you on the spot, and I'd love to have your comments later, but we are searching for an alternative if, in fact, you don't think that's a proper way of doing it. Is there another way of doing it that comes to mind that you could help us with? Because we are searching for what the best way would be.

Mr. TOWNS. Well, I will look into that a little further, but I have some concerns about this particular program.

Mr. LUNGREN. May I ask one question of Clay Shaw.

Clay, you referred to the amnesty provision. I hope you'll allow me to refer to it as the legalization provision. I happen to think there's a world of difference in the two. You believe that it ought to be dropped. My question is: What do we then do with the large number of undocumented aliens who have been in this country for an appreciable period of time?

The reason I ask that is that in California we had a Field Foundation poll last year and the question was asked: "Ought those people who are here illegally be deported?" An overwhelming majority of Californians of all groups, Anglo, Hispanic, and black, said yes. It was followed up by a second question which said, "Would you support legalizing those who have been here illegally for 5 continuous years?" And again in every category it was an overwhelming yes, not quite as high as the first response but almost as high.

And in light of that, what do you suggest we do with those people who are here and have been here for 5 years or more?

Mr. SHAW. I'd like to break the question up into two basic areas. I think, first of all, if you continue to do what we are doing now, the answer would be nothing, because the Federal Government really is doing nothing meaningful to deport the people who are here illegally. We have heard comments made by members of the committee as well as people testifying that if we were to eliminate this particular provision then we will start sweeping through neighborhoods and shoving people out of the country. We know that is not going to happen. We don't have the resources or the manpower to do it. We haven't done it and we are not going to do that.

But I do think the question of what to do with the people here that have been here illegally for some time and who have really started to make a meaningful contribution to society is something that we are going to have to address and look at.

I just think this is the wrong form in which to approach it at this particular time, and this is the wrong bill. What I am hopeful that this bill will do is send out messages around the world, across this



hemisphere, that the United States is serious about enforcing its immigration policy and that we are going about it.

I think also the employer sanctions is a very important portion that is going to cause a lot of the people who are here illegally to simply go home because they cannot be legally hired and the economic magnet that brought them here is simply going away.

And if you look at it from an individual humanitarian position, it is very difficult. You have made the parallel with knowing somebody down the street or somebody's maid or somebody's friend or a faithful employer of somebody as to, "Are you going to go and deport that person?"

Well, this bill really doesn't do that. This bill doesn't change that particular law. I just think this bill is the wrong bill in which to deal with this subject and the far-reaching ramifications that it's going to have.

Mr. MAZZOLI. The gentleman's time has expired. And if I might insert about 10 seconds, I do hope the gentleman as a leader of the delegation would examine the question. I think there is a very great degree of difference between the amnesty that the gentleman talks about and the legalization program which is in this bill and which the gentleman from Texas talked about. Our bill means you have examinations of all applicants, you have scrutiny, you have a test of the person's background, of his work habits, of what he may or may not have done with respect to criminal law while he's been in the country. It is certainly no blanket "let everybody come in" kind of legalization program.

So I would just ask the gentlemen to examine it.

The gentleman from Florida is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Shaw, in light of the comments the chairman just made, basically it's not a blanket amnesty; it's a legalization program. But also in light of the fact that you cited some statistics where it showed that 10 percent or even less on many occasions, in areas where the legalization program was offered, frankly took advantage of it, doesn't that to some degree unfortunately vitiate the whole concept of amnesty in any event and leave us with a situation where most people, because of the process you have to go through, will wind up staying underground? They haven't been detected for 5 years and probably will have a very good chance of remaining undetected if they don't come forward because they might not qualify in the program.

Mr. SHAW. I think the gentleman is quite right. When you make that particular parallel or state that problem, I am reminded of a conversation I had with Representative Rangel when he was talking about the problems he was having with the census-takers. He had a very difficult time trying to convince many of the people living in his district that the census-takers were not the immigration officers.

And I think you are absolutely correct. You are going to find that problem. And I don't think that the legalization portion of the bill, or amnesty, if you will, is going to solve that problem for the vast majority of those who are here illegally. I think you're quite right.

Mr. SMITH. Congressman Towns, you expressed some reservations in your comments about the program relating to provisions for adjudicating procedures and ultimately the asylum situation.

Would you indicate how you feel about due process? Do you believe in administrative due process for an illegal alien who arrives on these shores who is caught immediately and detected immediately? Do you believe in administrative due process or constitutional due process or any kind of due process?

Mr. TOWNS. If it is set up in a way that it will be fair, that's one thing, but the point is that in terms of the procedure that has been implemented there is some question about whether or not there is fairness. And that has been the real problem up to this particular point. Regardless of the type of structure, there is some question as to whether or not it's been a fair procedure.

Mr. SMITH. Of course, "due process" in essence means fairness.

Mr. TOWNS. Yes.

Mr. SMITH. Assuming that there is due process, would you limit it to administrative due process? Would you think in terms of full due process, which means constitutional due process, or would you have some other way of handling it?

In essence, working backward, should someone who arrives on these shores illegally, comes here on a boat, an economic refugee, for instance, who may have an absolute right to avoid the poverty in that country, doesn't seek asylum in the political sense, comes here looking for a job, gets caught on the beach, is put into a holding detention—from that point of view, what should be their ultimate ability? Should they be able to go to the Supreme Court of the United States to plead their case after they have been through every other process, and during that provision have attorneys provided by the United States, be paid by the United States on welfare or some other Government program?

I am curious as to who in Congress feels that once somebody gets here illegally they are entitled to utilize every advantage a citizen is offered and, in fact, they can stay in this country 2 or 3 or 4 years and ultimately get due process in front of the Supreme Court of the United States.

Mr. TOWNS. It depends on the nature of how a person arrives and what's going on in that country. I could not talk about a blanket situation but in terms of what is happening, in terms of turmoil in that country, or if they are trying to escape from something, I think that is the way it should be weighed.

And if you're talking about in terms of administration, looking at it from that viewpoint, I would say yes, based on the reason that the person actually comes to this country.

Mr. SMITH. Thank you.

Thank you, Mr. Chairman.

Mr. MAZZOLI. I thank the gentleman from Florida.

The gentleman from New York is recognized for 5 minutes.

Mr. FISH. Thank you, Mr. Chairman. I welcome our colleagues.

Mr. Shaw, what do you anticipate would happen in years ahead if this Congress fails again to enact major reform of the legislation?

Mr. SHAW. I think we have seen the tip of the iceberg. We have seen it in the Southwest; we have certainly seen it in my own home State of Florida. I think we have right now lost control of our



borders, and I think the rest of the world is just beginning to really understand that. And the point of destination of half the people who live in the world today is going to be the United States. And unless we do something now we are going to totally lose control of the quality of life that we have worked so hard for in this country over the years.

Mr. FISH. Would you also anticipate that as more and more people enter surreptitiously that incidents of violence against minorities and particularly against Asians and Hispanics will increase in the United States?

Mr. SHAW. I think that is absolutely true. You can look at a community—and I have looked at the problem, and going back and talking about Dade County—Dade County has some wonderful people who have worked very hard over the years to establish beautiful race relationships. The community has gone through the problems of the sixties and the fifties of integration without any real disturbances. And you look at that community and you say, “Why now have they had the violence? Why do we have those problems in the city?” and what not and I think a lot of it was born out of the frustration of the illegal immigration that is going on in this country. It is very disturbing to any community, whether you’re talking about it at that particular level or whether you are just looking at the high instances of crime.

Mr. FISH. Wouldn’t you say it’s fair, looking ahead, that what we experienced in 1980 could easily occur again? And that is the American people would confuse the presence of entrants from Haiti, from Mariel, from Cuba, and surreptitious entrants on our borders, with those we want here, legal immigrants and refugees, and this again would cause a reaction against the admission of those people who we do wish to let in this country?

Mr. SHAW. There is no question that those who come here illegally are butting in front of the line. We have an orderly process by which immigration can be obtained legally into this country. And those who are violating the law and come to the front of the line are totally disregarding the laws that this Congress has set up and we expect the administration to enforce.

Mr. FISH. Thank you.

I think the views you have just expressed, Mr. Towns, are very important. I think we have a refugee act that is based on humanitarian considerations and U.S. foreign policy considerations, and it is undeniable that we need to have immigration. It is again one of the great traditions of this country. We are all descendants of immigrants. I would really hate to see this policy of ours in jeopardy because of the public reaction over uncontrolled immigration policy.

I would just like point out that I served on the Select Commission chaired by Father Hesburgh. In the course of 12 hearings across the country and 24 consultations with experts in Washington and 2 years of study, when it came to voting on the question of employer sanctions the Commission voted 14 to 2 in favor of them. And that Commission had such people on it as Father Hesburgh, then-Secretary of Labor Ray Marshall, then-HHS Secretary Pat Harris, Attorney General Civiletti, Secretary of State Muskie, Senator Kennedy, the chairman of this committee, Pete Rodino, a

former subcommittee chairman, Elizabeth Holtzman, as well as four Republicans in the House and Senate.

So my point is we spent 2 years on that Commission and we were unable to come up with a better or more human enforcement than employer sanctions.

I hear my time is up.

Mr. MAZZOLI. We thank you very much for your statement.

Mr. FISH. When did you get the bell?

Mr. MAZZOLI. That's a new device we put in to speed things along.

We have been joined by Congressman Brown from Colorado.

Hank, as you are aware, the Attorney General has been waiting. The other two gentlemen are excused. If you gentlemen want to stay, you're welcome.

Hank, if you want to deliver your statement, you may. Without objection, your entire statement will be made a part of the record.

Mr. BROWN. Mr. Chairman, thank you. If I may, I'd like to add some personal remarks to that statement that you have been kind enough to put in the record.

My hope is to draw the committee's attention to the provision of the bill that involves employer sanctions, and specifically that area of the bill that involves the exemption of Government entities from those sanctions. And I am sure it was drafted with that exemption for very good reason. But I would just like to share a perspective on this issue, born of an experience in my prior job.

I worked for a company that was involved in cattle feeding, lamb feeding, slaughter and processing of the byproducts, and nationwide sales of those products.

During a period of that employment I handled a variety of areas, one of which was our hide processing. It's a common process involved in every packing plant. It was one that the company I worked for did not itself perform. We contracted for a company to provide that service. But, out of our concern that they be responsible employers, we tried to follow up and make sure that the people who did that processing of our hides acted in compliance with the law. We found on occasion that they employed a great many illegal aliens to process those hides.

In following up on that and making sure they did follow the laws, we asked what kinds of provisions they were following to make sure the people that they employed were citizens.

They informed us they checked the ID's of all new hires. All the people had driver's licenses, the people had social security cards, the people were referred to them by the Colorado State Department of Employment.

Yet, the bill exempts governmental entities from the employer sanctions. My hope is the committee would take another look at this exemption from two perspectives:

First of all, effectiveness. You simply cannot tell an employer, who does not employ a competent attorney all of the time—and I don't think you want this country at a point where every employer has to have an attorney at his side every time he makes a decision—that, when someone comes to them with a Government-issued driver's license and a Government-issued social security card, and is in fact referred to them by an unemployment agency



run by the State government and funded by the Federal Government in cooperation, that it's wrong to hire them. To exempt those governmental entities from the sanctions of the bill—specifically the unemployment service that refers illegal aliens for jobs—undermines the effectiveness of the bill.

Second, I would hope you would look at this issue also from the point of view of fairness. To impose sanctions of real significance on employers without imposing those same sanctions on people who play the major role in the process of locating jobs for illegal aliens is terribly unfair.

With those two perspectives, effectiveness and equity, I would hope you'd take a new look at employer sanctions. My personal preference would be that you would not exempt governmental entities from those sanctions.

[The complete statement follows:]

#### STATEMENT OF HON. HANK BROWN

I would like to thank the Subcommittee for this opportunity to testify. In my judgment, immigration reform in this country is long overdue. We rightly pride ourselves on being what John F. Kennedy called "a nation of immigrants." Since the time of the Pilgrims, America has offered freedom to those fleeing political and religious persecution and opportunity to those fleeing famine and poverty. In turn, refugees and immigrants have brought to this country their talent and their enterprise, their energy and their ideals. It behooves us, as the descendants of immigrants, to make sure that America continues to be a beacon of freedom and opportunity to the poor and oppressed everywhere.

At the same time, we are a sovereign nation and, as a sovereign nation, we have the right—and we have a duty to our own citizens—to control our own borders. We all welcome the orderly admission of legally qualified immigrants to this country. But we should not welcome the untold thousands of aliens who are entering this country illegally at a time when social services are already overburdened and there aren't enough jobs for our own citizens.

The legislation introduced by Representative Mazzoli and Senator Simpson is an attempt to address this problem. I am in sympathy with much of that bill. But I would like to direct your attention to one aspect of the bill that ought to be changed. The bill makes it illegal for employers knowingly to hire illegal aliens and requires that employers keep records showing that certain kinds of identification were checked at the time of hiring. The same requirements are imposed on private referral agencies, defined as agencies that refer "for a fee." However, government referral agencies—such as state employment offices and federal jobs centers—are exempted from this requirement. It is not clear why they are exempted. Is it that it is more appropriate for private citizens to enforce our immigration laws than for government agencies to do so? Is it that the paperwork burden that is acceptable when imposed on a business or farm is too burdensome for the bureaucracy? Is it thought that two check points would be less effective than one? More likely, it is just an oversight.

This oversight can easily be corrected. The requirements that the bill would apply to private employers and to private referral agencies can simply be extended to government referral agencies. The change would make the bill both more effective and more fair. It would be more effective because it would discourage government assistance of an illegal activity. Fraudulent documents would be examined twice and, on one occasion at least, by people professionally trained in the detection of such documents. It would also be more appropriate. If the magnitude of the problem requires that employers have some responsibility here, then surely it requires that government entities have an equal, if not greater, responsibility. What is an employer to think when he is fined by one government agency for hiring workers referred to him by another government agency? Finally this becomes a question of fairness. We live in a society drowning in paperwork. Government regulations, forms, and procedures are the bane of every businessman, indeed, of every citizen. For the government to impose additional paperwork on private citizens who run farms and businesses and to exempt itself would be unconscionable.

Immigration is a complex and controversial issue. It will be difficult for Congress to shape legislation that is both workable and broadly acceptable. The proposal I

have made today would make at least one section of that legislation both more effective and more fair.

Mr. MAZZOLI. I thank the gentleman from Colorado for his suggestion.

I will yield myself 5 minutes. What the committee sought to do, of course, was to eliminate, to the extent it could, unnecessary paperwork. It felt where the referral and reference was done not for a fee that it became an activity which ought to be encouraged and ought not to be encumbered; on the other hand, where the referral of recruitment was done for a fee, then that should come under sanctions and would require the employers to dispose of the paperwork.

So it was not, certainly, intended to benefit governments. It was just the thought that there were some matters which might take place in hiring which were not for a fee that were being done by a private firm.

We will certainly examine your idea, in our attempt to achieve fairness and balance.

I yield to the gentleman from California.

Mr. LUNGREN. I'm not going to ask any questions other than to thank Mr. Brown for bringing this to our attention. The gentleman stated rather correctly that our talk was on fee versus nonfee basis, but recognizing the difficulty you have with the bill, would suggest that the private sector ought to be doing something in sanctions in public sector exemption.

Mr. MAZZOLI. The gentleman from Florida.

Mr. SMITH. Mr. Chairman, I don't have any questions. I certainly share your concerns if someone is recommended with the color of legitimacy because they come from a State or Federal agency, directly upon a recommendation or referral, apparently the employer is going to be in the position where he will probably treat that as something that is an accomplished fact of legitimacy and it will be a problem.

Of course, by the same token, the bill does provide for knowingly hiring an undocumented alien. And I think in many instances you have to be aware of the fact that in that situation, if there was ever an action, it would certainly appear to me that any competent attorney would be able to say—although we don't want to get that far down the road, it seems to me you'd have a pretty good argument on the basis that they were sent to you by a State or Federal agency and came with appropriate documentation.

But I share your concerns as well.

Mr. MAZZOLI. I thank the gentleman.

The gentleman from New York.

Mr. FISH. Thank you, Mr. Chairman.

I think our colleague, Mr. Brown, made a strong argument. I recall that the words "for a fee" were added to the original bill which included the words "recruiting and referral," for two reasons. One was to put the onus on the entity that could best make the judgment, instead of the individual; second, that "for a fee" protected the entities that do recruit and refer, such as corporations on university campuses who might recruit 500 people and accept 10. And we don't want them to be burdened in their recruiting.



But you point out a gap here that we have to deal with and see if we can't come up with a solution.

I appreciate your comments.

Mr. BROWN. Mr. Chairman, I can certainly appreciate and sympathize with the committee's concern about minimizing paperwork. Perhaps the intent of my testimony is to suggest two things:

First of all, that the Government itself is a major source of placement of illegal aliens. I'm not sure that testimony on this matter has come before the committee before, but in terms of employers who want to conscientiously follow the law for low-paying jobs, many of their referrals do come from the Government.

Second, perhaps a way to solve this problem is not solely through the fee/nonfee basis, but by specifically including Government.

Mr. MAZZOLI. We will have to refer to the lawyers to see if it's constitutional to make a distinction between Government as an entity and non-fee-producing referrals and references in the other sector.

In any event, thank you very much.

We now welcome our next and final witness for the day. We will turn to the Attorney General of the United States, Mr. William French Smith, and any of your assistants who wish to come forward are welcome.

Mr. Attorney General, your statement which has been filed with us will be made a part of the record, and we welcome your statement.

#### TESTIMONY OF WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General SMITH. Thank you very much, Mr. Chairman, and members of the subcommittee.

Some years ago a delegation of American Indians visited Washington to dramatize the plight of their people. The leader of the delegation, Chief Ben American Horse of the Sioux, stopped here at the Capitol to visit Alben Barkley, who was then Vice President of the United States. After a long discussion, the chief rose to leave. He then paused for a moment, looked the Vice President in the eye, and said, "Young fellow, let me give you a little advice. Be careful of your immigration laws. We were careless with ours."

The United States has, indeed, in recent years been careless about its immigration laws. In spite of the best efforts by the Immigration and Naturalization Service, those laws themselves have proved inadequate to meet the pressure of ever-increasing illegal immigration that even now threatens to engulf us. Simply put, we have lost control of our borders. As a result, we need new immigration laws, and we need them now.

Discussing the need for immigration reform with this committee is, however, a little like describing another kind of flood to Noah. During the 97th Congress this subcommittee made a tremendous stride toward that goal. The administration appreciates your commitment to this difficult task and the prompt introduction in the 98th Congress of H.R. 1510, the Immigration Reform and Control Act of 1983.

In recent years, we have all been through an exhaustive legislative and executive branch discussion about immigration reform. Although disappointed by failure to enact legislation last year, we have the benefit of those debates to chart the legislative course this year. We are now well informed on the issues of enforcement, civil liberties, cost, social equity, and labor force protection important in any discussion of immigration reform.

Before specifically addressing the most important provisions of the Immigration Reform and Control Act of 1983, I would like to begin with a few, more general observations. This legislation would increase the law enforcement powers of the Immigration and Naturalization Service by imposing sanctions on those who knowingly hire illegal aliens. And it would reform and expedite our procedures to return those who come or remain here illegally. At the same time, the bill would both deal realistically with illegal aliens who are now here—and safeguard against discrimination—by granting many of them a legal status. By establishing certain statutory provisions for the present H-2 temporary worker program, it acknowledges the likely need for some kind of legal foreign labor, but would protect U.S. workers.

Mr. MAZZOLI. Excuse me, Mr. Attorney General.

May I ask what's going on in the audience? What is all this confusion?

If you would suspend, Mr. Attorney General, just for a second until we have some order.

I ask the audience, to the extent possible, to stay seated in respect to all of our witnesses, not just the Attorney General but all of our witnesses.

Mr. Attorney General, you may proceed.

Attorney General SMITH. Failure to enact reform legislation of this kind can only result in further illegal migration, greater public frustration over the Government's inability to control our borders, and the negative social and economic effects occasioned by so large a number of persons living outside the law. Each day lost in enacting effective reform legislation makes it increasingly difficult to remedy these problems. For all these reasons, the administration strongly supports the enactment of a balanced and fair immigration bill.

At the root of illegal immigration is the ready access of illegal entrants and visa abusers to jobs that are very attractive when compared to employment opportunities in their homelands. The cornerstone of immigration in H.R. 1510 is therefore a provision making it illegal knowingly to hire aliens who are not authorized to work in the United States. Employer sanctions is the only remaining, credible tool to stop the flood of illegal immigration. As long as the American job market remains open to them, illegal aliens will risk: The dangers of illegal entry, the cost of smuggling or fraudulent visas, and the likelihood of apprehension and deportation.

As I said in my testimony last year:

In pursuing a law that will close the labor force to illegal arrivals, we must do so in a manner that is not unreasonably burdensome in cost and that is consistent with our values of individual liberty and privacy.



Toward those ends, the administration has several recommendations concerning employer sanctions.

We should work together as contemplated by the bill to insure the adequacy of our system for verifying employment eligibility, but we should do nothing that would result in a national identity card or system. The President's Task Force on Immigration and Refugee Policy reviewed the alternatives to the use of existing documentation for establishing employment eligibility. As we indicated last year, the administration is willing to study and report to you on the need for and feasibility of improvements in present documentation. We would be prepared to begin the implementation of appropriate changes within 3 years of enactment of this legislation. This period will provide us with an opportunity to evaluate the efficacy of relying on existing documentation and to determine what, if any, improvements would be appropriate.

We believe that adequate civil penalties should be imposed—perhaps in the range of \$1,000 to \$2,000 as provided in your bill—but that criminal fines or prison terms should be imposed by a court only when an injunction against repeated offenses has been violated. Broad voluntary compliance can be expected, but substantial civil fines and injunctions for a pattern and practice of violations will assure even greater compliance.

The provisions for administrative and judicial review of employer sanctions violations should be simplified. The potential for employers to seek administrative and judicial review of civil penalties and the requirement that the Government affirmatively institute a collection suit to secure payment of penalties ultimately upheld on appeal could so burden the system that it would dramatically reduce the number of actions brought. Both administrative and judicial rights of appeal should be limited and consistent with due process. In addition, a final order affirming the imposition of a civil penalty should not require a subsequent action to secure payment.

We look forward to working with the subcommittee to further review these recommendations to insure that an employer sanctions law would achieve its goal of controlling the unlawful employment of aliens.

The administration agrees with the premise behind the legalization provisions in H.R. 1510, that we must deal realistically with the aliens who now live in the U.S. illegally. The failure to act realistically merely allows the problem to grow—adding perhaps 500,000 new illegal aliens per year to an illegal alien population estimated to be 3.5 to 6 million in 1980. It would not be realistic to attempt widespread deportation or to allow the status quo to continue perpetuating a class of society beyond the protections and sanctions of law. At the same time, we cannot—in fairness to American citizens, legal residents, and would-be immigrants waiting patiently to come here legally—provide unduly generous terms of legalization or eligibility for benefits at a time of high unemployment and budget austerity. This bill would provide aliens who have shown a commitment to becoming permanent members of our society. It is a sensible and humane approach.

Although some have criticized legalization as a reward for law-breakers, it represents a practical decision that is consistent with effective law enforcement. The failure to include such a legaliza-

tion program would aggravate enforcement of employer sanctions. It would leave in place those long-term illegal aliens who are most likely to resist removal from the United States by relying on the procedural safeguards and administrative relief available under the existing law. This would divert important resources of the Immigration and Naturalization Service at precisely the time when its enforcement priority should be effective implementation of employer sanctions.

Concerning legalization, H.R. 1510 represents the limits of reasonable compromise—since our original proposal contained a 10-year permanent residence requirement. Under this bill, illegal aliens who were in the U.S. before January 1, 1977, would be eligible for permanent resident status. Those who came here between 1977 and January 1, 1980, would be eligible for temporary resident status, and permanent status after 3 more years as law-abiding, self-sufficient residents. Aliens who have a criminal history, have assisted in political persecution, or are otherwise inadmissible would not be eligible for legalization.

The administration supports the granting of temporary or permanent residency to those aliens who meet the criteria set forth in H.R. 1510.

The bill would also amend section 249 of the Immigration and Nationality Act, by updating the so-called "registry" date from June 30, 1948, to January 1, 1973. While sympathetic to the updating of the "registry" date, we would, however, recommend against taking that action at this time. To do so would in essence be to set up an alternate legalization program for at least 175,000 to 300,000 aliens who could demonstrate continuous residence since before January 1, 1973. This alternative program would have different standards for screening and would permit these permanent residents to qualify immediately for Federal social welfare programs.

During temporary residency and the first 3 years of permanent residency, legalized aliens would—under this bill—be ineligible for Federal social welfare programs. Persons requiring assistance because of age, blindness, or disability, and those requiring medical assistance because of serious illness or injury or in the interest of public health, would be exempted from ineligibility. The legislation also authorizes full reimbursement to States for the costs of public assistance provided to eligible legalized aliens as well as payments to State educational agencies to assist in providing educational service to such aliens.

The administration opposes the exception to Federal benefit ineligibility set forth in H.R. 1510. We are even more strongly opposed to the provision authorizing full reimbursement for State and local cash and medical assistance to legalized aliens. Those two provisions would generate estimated costs of \$4 billion between 1984 and 1987 compared to the \$1.7 billion estimated for the Senate bill. At a time when the Nation requires budget austerity, such extraordinary added costs cannot be justified. Further, a policy for full Federal reimbursement does not provide incentives for cost control.

A legalization program is a sensible and human response to the large shadow population of illegal aliens in this country. The terms of the legalization should emphasize long-term continuous resi-



dence, along the lines of H.R. 1510, and grant legal status only to those who truly are members of their communities—in order to avoid encouraging additional illegal migration. A block grant program for medical care and other support for the newly legalized residents would appropriately reflect the shared responsibility of Federal, State, and local government and should be substituted for the reimbursement provisions currently in H.R. 1510.

With the passage of the Immigration and Nationality Act in 1952, Congress authorized the entry of temporary foreign labor if sufficient domestic workers were not available and their entry would not adversely affect the wages and working conditions of Americans. It is acknowledged that the labor needs of certain sectors of our economy have been filled over the past years by a sizable number of illegal aliens, who did not enter under the temporary worker provisions of the act. As we prohibit the employment of illegal aliens, it is important that we also provide a legal mechanism for employers to hire temporary workers when they are unable to find American workers.

The administration supports a statutory authorization of a distinct H-2 temporary worker program. This program may be particularly important for agriculture during the transition period from dependence on illegal alien labor to reliance on domestic labor. During the past year, the Departments of Justice, Labor, and Agriculture have been reviewing both the existing H-2 program and proposed statutory modifications. We seek a balanced program that would insure a source of foreign labor, but would not exploit employees or provide an added incentive to hire foreign rather than resident workers. Where there are no American workers to fill needed jobs, legislation should provide a legal avenue to admit foreign workers. It should also provide safeguards to insure that American workers are not adversely affected by foreign labor. It should protect the rights and welfare of all workers.

The administration also enthusiastically supports measures to make immigration adjudication and asylum procedures more effective and efficient. The current appeals process, by allowing multiple opportunities for administrative and judicial review, has resulted in unconscionable backlogs and has seriously undermined the enforcement of immigration laws.

We are very supportive of the provisions of H.R. 1510 that would allow currently designated immigration judges to hear asylum claims under the new bill once they have received special training. I continue to be concerned, however, by the provisions that would establish the U.S. Immigration Board as an independent agency within the Department of Justice. It is extremely unwise to splinter further the executive's authority to administer what was intended to be an integrated and coherent body of immigration law. The absence of accountability for this new agency would only compound the management problems that preceded our recent reorganization efforts and could further protract already slow proceedings.

The administration prefers that the statutory U.S. Immigration Board established by H.R. 1510 remain under the supervisory authority of the Attorney General—as is currently the case with the Board of Immigration Appeals. Particularly if the availability of ju-

dicial review is clarified as you have recommended, the desired independence of the Board and the immigration judges can be achieved without the total loss of executive oversight.

While continuing to share the committee's aim of achieving a better adjudication and asylum system, the administration also has reservations about some of the provisions currently contained in H.R. 1510.

First, in order to preserve flexibility for emergency situations and workload changes, the number of immigration judges should not be fixed by statute.

Second, the jurisdiction of the U.S. Immigration Board should be capable of expansion by regulation of the Attorney General, as you have provided concerning the jurisdiction of immigration judges. H.R. 1510 incorporates the present regulations on the jurisdiction of the Board, but the Department is currently considering changes in some areas of the Board's jurisdiction. Without this flexibility, the Department would be obliged to seek legislation when any addition is deemed necessary or advisable.

Third, we are concerned about the bill's retention of the adversary-type hearing process for asylum adjudications. The administration's original proposal attempted to create a nonadversary system for the adjudication of asylum claims. We continue to believe that the current asylum backlog demonstrates the difficulty of dealing with these claims through the traditional adversary system and that a more nonadversarial approach should be implemented.

Fourth, while appreciating and sharing the committee's concerns regarding delay in the asylum process, we have grave concerns regarding the various time limits imposed under the bill. Basically, compliance with strict statutory limits upon the commencement and decision of asylum cases may not be achievable. This is particularly true for a U.S. Immigration Board that is independent and not subject to the control of the Attorney General. The sanction for failure to comply with time limits—release of a detained alien into the community—offers the public inadequate protection, which would become critical in the event of a large-scale concentrated migration that would overburden the asylum system.

We appreciate the subcommittee's consideration of these recommendations concerning adjudication procedures and asylum. We will, of course, provide whatever additional supporting materials you desire.

Concerning legal immigration, we propose two changes: One, increasing the number of visas available to Canada and Mexico, which should decrease the number of illegal entries for family reunification, and two, streamlining the labor certification process.

This subcommittee and your counterpart in the Senate brought us to the threshold of historic action on immigration reform in the last Congress. Your continuing commitment to that reform is exemplified by our hearing today—and the hearings you have scheduled during the next 2 weeks to provide all interested parties an opportunity to present their views on this important subject.

The administration remains strongly convinced that it is in the national interest that comprehensive immigration reform legislation be enacted without further delay. In the bipartisan tradition



that should continue to dominate debate on this subject, we pledge our support in achieving that goal. Together we can insure an end to the kind of carelessness with immigration laws about which Chief Ben American Horse warned. We can insure continued opportunity for both old and new Americans.

Thank you very much, Mr. Chairman.

[The complete statement follows:]

#### STATEMENT OF WILLIAM FRENCH SMITH, ATTORNEY GENERAL

Chairman Mazzoli and members of the Subcommittee.

I am delighted to have an opportunity to appear before you to discuss a matter on which we agree so fully—the urgent need for immigration reform. Yesterday, I testified before the Senate Judiciary Subcommittee on Immigration and Refugee Policy. The scheduling of these early hearings clearly demonstrates your recognition of the need for reform.

Some years ago, a delegation of American Indians visited Washington to dramatize the plight of their people. The leader of the delegation, Chief Ben American Horse of the Sioux, stopped here at the Capitol to visit Alben Barkley, who was then Vice President of the United States. After a long discussion, the Chief rose to leave. He then paused for a moment, looked the Vice President in the eye, and said: "Young fellow, let me give you a little advice. Be careful of your immigration laws. We were careless with ours."

The United States has indeed in recent years been careless about its immigration laws. In spite of the best efforts by the Immigration and Naturalization Service, those laws themselves have proved inadequate to meet the pressure of ever-increasing illegal immigration that even now threatens to engulf us. Simply put, we have lost control of our own borders. As a result, we need new immigration laws—and we need them now.

Discussing the need for immigration reform with this Committee is, however, a little like describing another kind of flood to Noah. During the 97th Congress this Subcommittee made a tremendous stride toward that goal. The Administration appreciates your commitment to this difficult task and the prompt introduction in the 98th Congress of H.R. 1510, the Immigration Reform and Control Act of 1983.

In recent years, we have all been through an exhaustive legislative and executive branch discussion about immigration reform. Although disappointed by failure to enact legislation last year, we have the benefit of those debates to chart the legislative course this year. We are now all well informed on the issues of enforcement, civil liberties, cost, social equity, and labor force protection important in any discussion of immigration reform.

Before specifically addressing the most important provisions of the Immigration Reform and Control Act of 1983, I would like to begin with a few, more general observations. This legislation would increase the law enforcement powers of the Immigration and Naturalization Service by imposing sanctions on those who knowingly hire illegal aliens. And it would reform and expedite our procedures to return those who come or remain here illegally. At the same time, the bill would both deal realistically with illegal aliens who are now here—and safeguard against discrimination—by granting many of them a legal status. By establishing certain statutory provisions for the present H-2 temporary worker program, it acknowledges the likely need for some kind of legal foreign labor, but would protect U.S. workers.

Failure to enact reform legislation of this kind can only result in further illegal migration, greater public frustration over the government's inability to control our borders, and the negative social and economic effects occasioned by so large a number of persons living outside the law. Each day lost in enacting effective reform legislation makes it increasingly difficult to remedy these problems. For all these reasons, the Administration strongly supports the enactment of a balanced and fair immigration bill.

At the root of illegal immigration is the ready access of illegal entrants and visa abusers to jobs that are very attractive when compared to employment opportunities in their homelands. The cornerstone of immigration control in H.R. 1510 is therefore a provision making it illegal knowingly to hire aliens who are not authorized to work in the United States. Employer sanctions is the only remaining, credible tool to stop the flood of illegal immigration. As long as the American job market remains open to them, illegal aliens will risk: the dangers of illegal entry, the cost of smuggling or fraudulent visas, and the likelihood of apprehension and deportation.

As I said in my testimony last year, "In pursuing a law that will close the labor force to illegal arrivals, we must do so in a manner that is not unreasonably burdensome in cost and that is consistent with our values of individual liberty and privacy." Toward those ends, the Administration has several recommendations concerning employer sanctions.

We should work together as contemplated by the bill to ensure the adequacy of our system for verifying employment eligibility, but we should do nothing that would result in a national identity card or system. The President's Task Force on Immigration and Refugee Policy reviewed the alternatives to the use of existing documentation for establishing employment eligibility. As we indicated last year, the Administration is willing to study and report to you on the need for and feasibility of improvements in present documentation. We would be prepared to begin the implementation of appropriate changes within three years of enactment of this legislation. This period will provide us with an opportunity to evaluate the efficacy of relying on existing documentation and to determine what, if any, improvements would be appropriate.

We believe that adequate civil penalties should be imposed—perhaps in the range of \$1,000 to \$2,000 as provided in your bill—but that criminal fines or prison terms should be imposed by a court only when an injunction against repeated offenses has been violated. Broad voluntary compliance can be expected, but substantial civil fines and injunctions for a pattern and practice of violations will assure even greater compliance.

The provisions for administrative and judicial review of employer sanctions violations should be simplified. The potential for employers to seek administrative and judicial review of civil penalties and the requirement that the Government affirmatively institute a collection suit to secure payment of penalties ultimately upheld on appeal could so burden the system that it would dramatically reduce the number of actions brought. Both administrative and judicial rights of appeal should be limited and consistent with due process. In addition, a final order affirming the imposition of a civil penalty should not require a subsequent action to secure payment.

We look forward to working with the Subcommittee to further review these recommendations to ensure that an employer sanctions law would achieve its goal of controlling the unlawful employment of aliens.

The Administration agrees with the premise behind the legalization provisions in H.R. 1510, that we must deal realistically with the aliens who now live in the United States illegally. The failure to act realistically merely allows the problem to grow—adding perhaps 500,000 new illegal aliens per year to an illegal alien population estimated to be 3.5 to 6 million in 1980. It would not be realistic to attempt widespread deportation or to allow the status quo to continue perpetuating a class of society beyond the protections and sanctions of law. At the same time, we cannot—in fairness to American citizens, legal residents, and would-be immigrants waiting patiently to come here legally—provide unduly generous terms of legalization or eligibility for benefits at a time of high unemployment and budget austerity. This bill would provide an opportunity to acquire legal status for those illegal aliens who have shown a commitment to becoming permanent members of our society. It is a sensible and humane approach.

Although some have criticized legalization as a reward for lawbreakers, it represents a practical decision that is consistent with effective law enforcement. The failure to include such a legalization program would aggravate enforcement of employer sanctions. It would leave in place those long term illegal aliens who are most likely to resist removal from the United States by relying on the procedural safeguards and administrative relief available under the existing law. This would divert important resources of the Immigration and Naturalization Service at precisely the time when its enforcement priority should be effective implementation of employer sanctions.

Concerning legalization, H.R. 1510 represents the limits of reasonable compromise—since our original proposal contained a ten-year permanent residence requirement. Under this bill illegal aliens who were in the United States before January 1, 1977 would be eligible for permanent resident status. Those who came here between 1977 and January 1, 1980, would be eligible for temporary resident status, and permanent status after three more years as law abiding, self-sufficient residents. Aliens who have a criminal history, have assisted in political persecution, or are otherwise inadmissible would not be eligible for legalization.

The Administration supports the granting of temporary or permanent residency to those aliens who meet the criteria set forth in H.R. 1510.

The bill would also amend section 249 of the Immigration and Nationality Act, by updating the so-called "registry" date from June 30, 1948, to January 1, 1973. While



sympathetic to the updating of the "registry" date, we would, however recommend against taking that action at this time. To do so, would in essence be to set up an alternate legalization program for at least 175,000-300,000 aliens who could demonstrate continuous residence since before January 1, 1973. This alternative program would have different standards for screening and would permit these permanent residents to qualify immediately for federal social welfare programs.

During temporary residency and the first three years of permanent residency, legalized aliens would—under this bill—be ineligible for federal social welfare programs. Persons requiring assistance because of age, blindness, or disability, and those requiring medical assistance because of serious illness or injury or in the interest of public health, would be exempted from ineligibility. The legislation also authorizes full reimbursement to States for the costs of public assistance provided to eligible legalized aliens as well as payments to state educational agencies to assist in providing educational services to such aliens.

The Administration opposes the exception to federal benefit ineligibility set forth in H.R. 1510. We are even more strongly opposed to the provision authorizing full reimbursement for state and local cash and medical assistance to legalized aliens. Those two provisions would generate estimated costs of four billion between 1984 and 1987 compared to the 1.7 billion estimated for the Senate bill. At a time when the Nation requires budget austerity, such extraordinary added costs cannot be justified. Further, a policy for full federal reimbursement does not provide incentives for cost control.

The authorization of federal support for educational assistance on behalf of legalized aliens is also unwarranted. It would create a new area of federal responsibility without addressing any real need. Only a few jurisdictions were making any attempt to distinguish illegal alien children within their school population prior to the Supreme Court decision in *Plyler v. Doe* last year.

The Administration does support the inclusion of a block grant program to assist states and localities in providing medical care or other welfare services to newly legalized residents. This appropriately reflects shared federal, state, and local responsibility for social welfare costs that may occur with legalization. This approach would help to offset costs for persons who become seriously ill or incapacitated or otherwise become eligible for state and local assistance programs because of unforeseen circumstances. It would not, however, create an open-ended federal financial responsibility for state programs.

Illegal aliens eligible for legalization will have to provide evidence of past and current employment in order to be granted legal status. The legalized aliens will be paying taxes—income, sales, property—to state and local governments. They will be contributing to their local economies, which is part of the rationale for legalization. Consequently, shared responsibility for health and welfare benefits to those legalized aliens who qualify under the terms of state and local laws is appropriate.

A legalization program is a sensible and humane response to the large shadow population of illegal aliens in this country. The terms of the legalization should emphasize long term continuous residence, along the lines of H.R. 1510, and grant legal status only to those who truly are members of their communities—in order to avoid encouraging additional illegal migration. A block grant program for medical care and other support for the newly legalized residents would appropriately reflect the shared responsibility of federal, state, and local government and should be substituted for the reimbursement provisions currently in H.R. 1510.

With the passage of the Immigration and Nationality Act in 1952, Congress authorized the entry of temporary foreign labor if sufficient domestic workers were not available and their entry would not adversely affect the wages and working conditions of Americans. It is acknowledged that the labor needs of certain sectors of our economy have been filled over the past years by a sizable number of illegal aliens, who did not enter under the temporary worker provisions of the Act. As we prohibit the employment of illegal aliens, it is important that we also provide a legal mechanism for employers to hire temporary workers when they are unable to find American workers.

The Administration supports a statutory authorization of a distinct H-2 temporary worker program. This program may be particularly important for agriculture during the transition period from dependence on illegal alien labor to reliance on domestic labor. During the past year, the Departments of Justice, Labor, and Agriculture have been reviewing both the existing H-2 program and proposed statutory modifications. We seek a balanced program that would ensure a source of foreign labor, but would not exploit employees or provide an added incentive to hire foreign rather than resident workers. Where there are not American workers to fill needed jobs, legislation should provide a legal avenue to admit foreign workers. It should



also provide safeguards to ensure that American workers are not adversely affected by foreign labor. And it should protect the rights and welfare of all workers.

The Administration also enthusiastically supports measures to make immigration adjudication and asylum procedures more effective and efficient. The current appeals process, by allowing multiple opportunities for administrative and judicial review, has resulted in unconscionable backlogs and has seriously undermined the enforcement of immigration laws.

We are very supportive of the provisions of H.R. 1510 that would allow currently designated immigration judges to hear asylum claims under the new bill once they have received special training. I continue to be concerned, however, by the provisions that would establish the U.S. Immigration Board as an independent agency within the Department of Justice. It is extremely unwise to splinter further the Executive's authority to administer what was intended to be an integrated and coherent body of immigration law. The absence of accountability for this new agency would only compound the management problems that preceded our recent reorganization efforts and could further protract already slow proceedings.

The Administration prefers that the statutory U.S. Immigration Board established by H.R. 1510 remain under the supervisory authority of the Attorney General—as is currently the case with the Board of Immigration Appeals. Particularly if the availability of judicial review is clarified as you have recommended, the desired independence of the Board and the immigration judges can be achieved without the total loss of Executive oversight.

While continuing to share the Committee's aim of achieving a better adjudication and asylum system, the Administration also has reservations about some of the provisions currently contained in H.R. 1510.

First, in order to preserve flexibility for emergency situations and workload changes, the number of immigration judges should not be fixed by statute.

Second, the jurisdiction of the U.S. Immigration Board should be capable of expansion by regulation of the Attorney General, as you have provided concerning the jurisdiction of immigration judges. H.R. 1510 incorporates the present regulations on the jurisdiction of the Board, but the Department is currently considering changes in some areas of the Board's jurisdiction. Without this flexibility, the Department would be obliged to seek legislation when any addition is deemed necessary or advisable.

Third, we are concerned about the bill's retention of the adversary-type hearing process for asylum adjudications. The Administration's original proposal attempted to create a non-adversary system for the adjudication of asylum claims. We continue to believe that the current asylum backlog demonstrates the difficulty of dealing with these claims through the traditional adversary system, and that a more non-adversarial approach should be implemented.

Fourth, while appreciating and sharing the Committee's concerns regarding delay in the asylum process, we have grave concerns regarding the various time limits imposed under the bill. Basically, compliance with strict statutory limits upon the commencement and decision of asylum cases may not be achievable. This is particularly true for a U.S. Immigration Board that is independent and not subject to the control of the Attorney General. The sanction for failure to comply with time limits—release of a detained alien into the community—offers the public inadequate protection, which would become critical in the event of a large-scale concentrated migration that would overburden the asylum system.

We appreciate the Subcommittee's consideration of these recommendations concerning adjudication procedures and asylum. We will, of course, provide whatever additional supporting materials you desire.

Concerning legal immigration, we propose two changes: (1) increasing the number of visas available to Canada and Mexico, which should decrease the number of illegal entries for family reunification, and (2) streamlining the labor certification process.

This Subcommittee and your counterpart in the Senate brought us to the threshold of historic action on immigration reform in the last Congress. Your continuing commitment to that reform is exemplified by our hearing today—and the hearings you have scheduled during the next two weeks to provide all interested parties an opportunity to present their views on this important subject.

The Administration remains strongly convinced that it is in the national interest that comprehensive immigration reform legislation be enacted without further delay. In the bipartisan tradition that should continue to dominate debate on this subject, we pledge our support in achieving that goal. Together, we can ensure an end to the kind of carelessness with immigration laws about which Chief Ben

American Horse warned. We can ensure continued opportunity for both old and new Americans.

Mr. MAZZOLI. Thank you, Mr. Attorney General.

The Chair will yield itself 5 minutes.

We thank you for your continuing devotion to the cause of reforming the Nation's immigration laws. As I have said many times, you spend as much time up on the Hill as you probably do in your own office. I think if you had known this was going to be on your agenda when the President proposed 2 years ago that you be his Attorney General, you may have had a whole different response; I'm not sure.

One of the constant problems we had last year in dealing with this legislation was the fact that our members kept saying, "Look, there's nothing in this thing to enforce. Where is the money, where are the people? They're not in your bill. Yet, you say part of this is enforcing the security of the border; part of it is going to be the application of people to enforce employer sanctions."

It is the disposition of the chairman of the subcommittee to make recommendations that there be money and people for INS put right into the bill. Would you believe the administration could support a bill that would have quite a few million dollars and quite a few people to implement this bill?

Attorney General SMITH. Well, Mr. Chairman, we would support a supplemental appropriation request if this program were passed in sufficient time to start implementation in the 1983 fiscal year. If not, we would support a budget amendment to provide for the necessary funds to enforce this program in the 1984 budget.

Mr. MAZZOLI. Well, we appreciate that, Mr. Attorney General, but unfortunately that really doesn't answer the questions that are posed to us constantly. Of course, you monitored the debate and you have heard and read a lot of what was said: The administration cannot be serious because if it were serious about enforcing the laws there'd be money in the bill and more people in the bill for INS.

I appreciate your statement, and maybe that will be the disposition of the subcommittee and the full committee and the House and the Congress. But I am inclined to think for myself that perhaps we need to put something directly in the bill—and I don't mean figures pulled out of the air. We do have some budget figures we are developing, and we will talk about them when we have the INS budget hearings here next week.

Mr. Attorney General, one of the other criticisms that people brought to our attention was this argument: Why do you say sanctions apply to every American employer, when you know that 99 percent of the American people and employers are honest and will do the right thing? It's a 1-percent factor of mischievous people. Cannot you target your employer sanction mechanism in order that we don't waste time on the honest, but you only target it to the dishonest people?

May I ask if you have thought that out. Is there a way which you think the centerpiece of our bill, which is employer sanctions, can be targeted?

Attorney General SMITH. Mr. Chairman, we don't think there should be any targeting provisions in the statute itself. We think



that really is an administrative matter, an enforcement matter. Needless to say, whatever is involved in terms of funds to finance this law enforcement effort, resources will still have to be very carefully allocated. And we think that that is true in law enforcement generally, which is something that should be handled on an administrative basis. We don't think there's any effective way that that can be handled or should be handled in the legislation itself.

Mr. MAZZOLI. So in a sense, this bill will be targeted because you, through your Immigration Service, will know which organizations, employers, corporations, have been the most likely to violate this act based on past history. Those are the ones you will go at, not the so-called "Mom and Pop stores." Essentially, we have that targeting in our bill. Is that your answer?

Attorney General SMITH. I think that the allocation of resources in and of itself, requires a targeting—I'm not sure I like that term—but certainly an emphasis in those areas where the violations are most likely to occur.

Mr. MAZZOLI. Mr. Attorney General, let me ask you a question. You, not too far past, have been in Southeast Asia, including Hong Kong, where they do have employer sanctions. One of the criticisms that is constantly leveled against employer sanctions is the GAO report which says allegedly they don't work.

I have read that report, and GAO says they don't work in some countries because the countries don't want them to work. In the countries that want them to work, they will work.

Do you have any more updated information? You have more recently visited Hong Kong. Do you have some response to that question? Do employer sanctions really work? Can they work?

Attorney General SMITH. Yes, as a matter of fact, I do. On the trip that you mentioned, I visited, among others, two countries. One was France and one was Hong Kong. France has employer sanctions which they have not enforced. Hong Kong has employer sanctions which have been enforced.

The unanimous opinion, at least of all the people we talked to in Hong Kong, was that employer sanctions were not only working but they were essential to deal with the problem they had there, which has some similarities to ours because of their border with the People's Republic. They are not only enforcing those employer sanctions, and successfully, they have also developed an identification card which, at rather substantial expense, they are now in the process of replacing with an even more secure card.

In France, as I say, they have employer sanctions which, at least until recently, have not been enforced. And I think that's the difference.

Mr. MAZZOLI. My time has expired. May I ask you: Is it the intention of this administration, were this law to pass, to enforce employer sanctions?

Attorney General SMITH. Indeed so.

Mr. MAZZOLI. Thank you.

The gentleman from California is recognized for 5 minutes.

Mr. LUNGREN. Thank you, Mr. Chairman.

I'd like to echo the chairman's comments, Mr. Attorney General, the fact that we appreciate the efforts that you and the administration have made and continue to make in moving historic reform of



the immigration laws of this country. We are just about 30 years overdue, I think, on this. Past administrations, whether Democrat or Republican, have, for whatever reason, found it to be required to avoid this issue.

So I think the administration is to be applauded for continuing this fight.

I was one of those who thought if we did not pass the bill last year, the prospect for passing it this year would be very poor, indeed. But based on the debate we had on the floor and the discussions of many people who were not then in a position to support the bill, I think it suggests we have a much better chance this Congress than we had the last of passing it. I think we need to keep the pressure on.

One of the things I noticed in a news article the other day was the fact that the Immigration and Naturalization Service and the Social Security Administration have embarked on a new cooperative effort for an exchange of information.

Based on what I have have read, I hope that is the case, because it moves us toward something we have been talking about for some time—avoiding a national identity card or system but yet showing that somehow we are serious about those means of identification that would be utilized in the effort that we are going to establish under this bill.

Is that cooperative effort that I read about a reality? Is it something that is proposed? Is it in effect or will it be in effect in the near future?

Attorney General SMITH. We, in a variety of different areas, have emphasized cooperation in the law enforcement area. And certainly the effort that you have just referred to, which is under study, is an example of our efforts. I suppose the most dramatic area is in drug enforcement where really almost for the first time we have undertaken to put together a cooperative effort among all of the agencies—and there are a host of them—that deal with drug enforcement. The same thing would certainly be true here.

Mr. LUNGREN. Well, if the administration is going to continue the strong position it's taken against a national identification card—I think we all agree we don't want a national ID card—I still happen to think we have to do something to have an employment card which most naturally would seem to be the social security card.

I would hope we are moving in the direction of closer cooperation between INS and Social Security. Since that is one of the documents we have to rely on, we have a little more reason to believe in the credibility of that document.

Attorney General SMITH. We certainly agree with that. We think, as far as the identity card is concerned, we really need some experience using currently existing identifiers to see how they work and to see what the percentage of fraud turns out to be. Certainly we need to take strong measures against those who are involved in the counterfeit document business.

But in terms of the card itself, if you have the most noncounterfeitable card possible—and I'm not sure there is such a thing—it doesn't do any good if it's built on a foundation of sand. In other words, if that card is based upon the basic documents that we now

talk about, such as birth certificates, drivers' licenses, and so on, which are in some cases easily counterfeited, then we haven't achieved a great deal.

So it's a matter, really, of looking at the whole problem. I really don't think that we can come to any firm conclusions on that, other than conceptual conclusions, until we have some experience.

Mr. LUNGREN. Mr. Attorney General, as you may know, the ABA last month came out in opposition to employer sanctions this was somewhat of a surprise to me, as a member of the ABA. I certainly know we were never polled on that. This was the action of whoever happened to be remaining at the closing days of the debate in the House of Delegates.

Were you requested to appear before the ABA and give your views on employer sanctions?

Attorney General SMITH. No, as a matter of fact, I was as surprised as you were when I read that, since the ABA has really supported immigration reform since at least 1976. And what caused their change in position, I really don't know. I will have to say I am not unduly impressed with the reasons given for the change, if what I read in the paper is correct.

Mr. LUNGREN. I thank you for your comments, because I checked with the chairman and he was not requested by the ABA to appear before them and talk on that issue. As the ranking member, I was not asked, and you as the Attorney General was not asked. I wonder if an organization that is so careful about indentured rules and so forth ought to so cavalierly take a decision that is so important with respect to an issue that must be addressed in this Congress.

Mr. MAZZOLI. Would the gentleman yield?

Was this decision of the ABA made before or after their decision that a lawyer had no responsibility to protect the public against the predatory tactics of a dishonest client? Was that before or after that decision?

Mr. LUNGREN. As I understand, though, that only goes as long as your fee is paid. [Laughter.]

If you're not paid, you are no longer obligated.

Mr. MAZZOLI. If the fee isn't paid, you can divulge; and if you are paid you can indulge.

Mr. SMITH. If the gentleman would yield, that's only personal now. Business is a different set of ethics.

Mr. MAZZOLI. I'm sorry; I appreciate that.

Would the gentleman from California yield?

Mr. FISH. There is a summer meeting of the ABA, and it occurred to me we could go in and straighten out the record.

Mr. MAZZOLI. The gentleman from Texas is recognized for 5 minutes.

Mr. HALL. I am reminded of the time when Melvin Belli represented Jack Ruby in Texas, and the American Bar Association was not too happy with Belli's representation, so they issued a very strong warning that if he continued such he would not be able to continue being a member of the American Bar Association. He said, "That's like being told you can't join the Book of the Month Club." [Laughter.]



Mr. Attorney General, I want to ask you one or two questions. On page 8 of your statement you state that the authorization of Federal support for educational assistance is not warranted. That is, I presume, the children of illegal aliens.

The next paragraph states you do support the inclusion of a block grant program to assist States and localities in providing medical care or other welfare services.

Well, my only question is, What is the difference or distinction between aid for the body and aid for the mind? How can you say you're in favor of taking care of the medical services of these people but you can't take care of trying to educate their children?

Attorney General SMITH. Well, we are dealing with a specific problem here that has to be dealt with in a balanced way. There are a host of things that a good many people would like to see done in a variety of different ways, and we have very limited resources. We have a particular situation here involving people who are here illegally, who came here illegally. There are certain obligations that we have in that respect. And we have limited resources. And so we have to make determinations and choices.

Mr. HALL. But aren't you dealing with the same children of the same people, and you're saying, "We'll take care of them medically but we will not take care of them educationally."

Attorney General SMITH. We're saying we'll take care of them—

Mr. HALL. How can you draw that distinction?

Attorney General SMITH. Well, if you look at this whole immigration program, it is one of making distinctions, and in some cases distinctions that really represent compromise more than anything else.

As I say, we have very limited resources that we can dispense here, and we have to take care of those situations where the need is greatest. It's not a matter of just treating this group as though we had unlimited resources. We are dealing here with an immigration program, not a social welfare program, but we have to recognize there are social aspects to it. And we think that the balance that has been struck here is the best one under the circumstances.

Mr. HALL. Well, if the bill is passed, which calls for the granting of this amnesty to these illegal aliens—and I'm living in a part of the country where we could very easily be inundated by children of illegal aliens who come here under this process—under those sets of circumstances can you envision where it might be necessary for the Government to come in and help these school districts try to educate these children?

Attorney General SMITH. What I'm saying is that when you say "come in," we are really talking about people who are not "coming in" but people who have been here—at least those who will achieve permanent resident status—since January 1, 1977. These are people who are already part of their communities. They are people who are in essence self-supporting and people who, by and large, are taking care of their own dependents.

Mr. HALL. All right. Getting on to something else, I have always had a problem in my mind about not enough people on the border to enforce the law that we now have to keep people from coming across the Rio Grande. And in the record last year, during the



lameduck session, I had some information given to me by INS in which they gave me, I think, some very pertinent facts on the distances of the coastline between the United States and Mexico, about 1,900 miles. The Canadian border is 3,987 miles. The coastline is 11,000 miles. And they go on to talk about the number of border patrol in the United States on duty as of the end of October 1982—2,319, and 2,498 had been authorized—but that there were insufficient funds and there had not been money appropriated to pay for the additional people that this committee and this Congress said should be on force.

Now, I broke down the differences in the miles per agent. It indicated there is one man for every 12 miles of border, and that at any one given time—and this is part of my testimony—after you take into consideration shift sizes, weekends, sick leaves, you have only 155 officers on line duty—line duty is at the boundary between the States and Mexico—at any given time between Mexico and the United States.

Now, 155 divided into 1,933 miles of border territory gives us 12.47 miles per officer.

Mr. Attorney General, do you think if we had more people on the border between the United States and Mexico that we couldn't have a better handle and a better control over what comes across that border?

Attorney General SMITH. Well, there are several responses to that.

First of all, the areas where the illegal aliens come across are concentrated. Although it is almost 2,000 miles, the transit takes place in fairly well defined areas.

But even if that were not the case, even if you had a Maginot Line built along those 2,000 miles, you still wouldn't stop the problem. Because you still have 11,000 miles of coastline. If you were able to seal that border—which there is no way to do—there are always alternate ways. We have seen that, as a matter of fact, with drug traffic. You stop it in one area and it goes somewhere else.

So even if you could seal that border you would not have solved the problem. But needless to say, there is no way to seal the border. It wouldn't make any difference if you doubled, tripled, or quadrupled the number of people that we have there. It would make a difference in apprehensions, to be sure.

Like the chairman, I have been around the country talking about this subject a good deal, and I found substantial sentiment in Texas to the effect that they didn't want to stop the movement back and forth, because the movement is back and forth, not just one way. Of course, the net is this way, but there is a movement back and forth and there are many people who don't want to stop that.

But that is neither here nor there.

Last year in the 1982 budget we did increase our border patrol by some 170 positions through a supplemental appropriation of some \$65 million, as I recall. We'd like to be able to do more there. But any idea that this is going to solve the immigration problem is just really dreaming.

The fact that you cannot really block that border is the reason why an employer sanctions law is the only remaining credible tool to get at this problem.

Mr. MAZZOLI. The gentleman's time has expired, but I would like to tell the gentleman from Texas that he brings up a very important point, and it is going to be before the subcommittee. There are several different formulations and initiatives to help strengthen that border.

The gentleman from New York is recognized for 5 minutes.

Mr. FISH. Thank you, Mr. Chairman. Welcome, Mr. Attorney General.

It should be evident to you from everything that has been said so far that there is a strong bipartisan support in the subcommittee for a reform bill. And I think there are two areas where you could help us. They both were mentioned. I just want to underscore them.

There are some critics of employer sanctions who for their own reasons cite inadequate border enforcement, and they ask for prior enforcement capability as a framework of this legislation. And, of course, this prior enforcement capability has also been commented on by the Select Commission.

So with all due respect to what you just said in response to the gentleman from Texas, I do recall—I can't think of the name of the operation—there was some 6 or 8 years ago a special operation to which a number of border patrol personnel were transferred, and there was a marked drop in the people coming across and a marked increase in apprehensions because of the enforcement capability.

I wouldn't be at all surprised if this subcommittee did increase the personnel in the budget request. Congress has always been very supportive of our activities. And I think you could help the bill if you would support our action in that regard.

The other thing the chairman mentioned that is constantly thrown at us is the GAO report that in certain foreign countries employer sanctions have been ineffective because of the lack of resources for enforcement. And they cite this experience to us as an argument against a new provision for employer sanctions.

The chairman asked you about your determination to see that when this bill is enacted, that this will not be U.S. experience but the law will be enforced. And I think it would be very helpful if we could have a letter from you to this effect, that it is your determination to see that the law is made effective.

If I could turn your attention to page 7 of your testimony, "The administration opposes the exception to Federal benefit ineligibility set forth in H.R. 1510."

As you know, during the period of alienage, temporary residence, as well as the 3 years of permanent residence, the bill does not permit financial assistance under Federal law—medical assistance, food stamps, et cetera.

Then carved out on line 14, page 83, is the exception. And the exception is, "In the case of assistance provided to aliens, determined in accordance with regulations by the Attorney General, to require such assistance because of age"—they're talking of blindness and disability of people over 65—"or medical assistance required in the interests of public health or because of serious illness or injury."



Well, that was a minimum we included in the bill in the last Congress in response to the cries from Governors and mayors as to the financial burden that they would incur if we did not have any exception to ruling out of Federal assistance during the period of temporary residence, plus the 3 years thereafter.

I fear that we will find a strong opposition to legislation from major groups like the Conference of Mayors and the League of Cities and the Governors if we don't meet their very valid concerns that we are backing off on assistance that they look to from the Federal Government.

And you do come back part way with your recommendation for a block grant for medical care and welfare services to newly legalized, but that doesn't meet the problem of the people who are on a temporary status.

I do appreciate your third opportunity to help us. It is a terribly difficult task of meeting the concerns of such a broad constituency as this bill has.

I know in my own State of New York and the city of New York, the financial burdens would be enormous.

Mr. MAZZOLI. I thank the gentleman.

The gentleman from Florida is recognized for 5 minutes.

Mr. SMITH. Attorney General Smith, frankly I am very dismayed about the comments in your prepared remarks on pages 7 and 8, to carry further what the gentleman from Texas said, the line of questioning he started, and then what the gentleman from New York introduced.

In Florida at the present time whole local and State resources in this area of social programs are strained to the limit with the reality that, notwithstanding whether they are legal, illegal, here rightfully, here wrongfully, there are large numbers of people who are being taken care of by the State and local governments because they require some care, and you just can't turn your backs on people.

And over the last number of years in our State, we have seen the Federal Government abrogate its responsibilities considerably in terms of reimbursing to the State and local governments for what is essentially a national problem.

When the Mariel and Haitian boatloads came, they were treated as a national problem—with the newspapers, television, all media—and yet, right now there is very little, if any, money flowing from the Federal Government to pay back the taxpayers of my State for the enormous amount of extra dollars they have had to put into the system. And I frankly do not understand your abrogating the responsibility whether or not everybody turns a profit at the Federal level. I can tell you as a former State legislator we have worse budgetary problems at the local level because as bad as it is at the local level, the Federal Government is now pulling out official funds as well.

And I really don't understand how you can just literally shut your eyes to the problems that the local governments are having and the State governments are having in terms of providing services when they have to be provided for humanitarian reasons.

Jackson Memorial Hospital is a public trust hospital in Dade County and has \$14 million of bad debt for immigrant health care.



Hollywood Memorial, a public hospital, has \$8 million in bad debt which last year required a tax increase for the taxing district of the hospital of 101 percent.

Now, in light of those figures, and in light of the fact that humanitarian needs require that many of these people be given medical care and, as the gentleman from Texas talked about, educational responsibilities so that these immigrants are not bound into the status of no education, why doesn't the Federal Government provide some help, look favorably upon giving the States some help to the local governments who are funding with local dollars a Federal problem?

Attorney General SMITH. As a matter of fact, you mentioned that local and State governments have financial problems. There is no question about that. The Federal Government also has the same problems. And it is incumbent upon us to exercise discipline at this level as is true with State and local government.

What we are proposing here is a balanced effort. We are not withdrawing—as a matter of fact, this program includes a block grant program that would cost \$1.1 billion or a total of \$1.7 billion over 4 years.

As I mentioned in the statement, these people we are legalizing—are by large self supporting—and these are the people we are talking about.

Mr. SMITH. I'm talking about people right now. That's what I'm talking about. Let's get away from the realities of what may happen in the future. Let's talk about what is actually happening now. We have hundreds of thousands of illegal aliens in my home State, in the counties that make up my congressional district. And the Federal Government is doing literally nothing to help the State and local people remove the financial burden from what is a Federal problem.

As long as we don't scream, you shut your eyes to it. Well, I'll tell you, my people are fed up. They need to provide the services, just on a humanitarian basis alone, and we are getting no help from the Federal Government and we think it's wrong—dead wrong.

Attorney General SMITH. Of course, our concern here is this immigration program, and the problem that exists now is a separate and independent item.

Insofar as this immigration program is concerned, what we are proposing is that State and Federal and local government should jointly bear the burden—and it is a burden, and it is a problem, and something has to be done about it; there's no question about it.

But the Federal Government here is proposing a block grant for 4 years in a substantial amount. The people we are talking about are going to be working and paying taxes in Florida and everywhere else, and so the States and localities will be benefitting from those taxes as well as the Federal Government. This should be a shared burden, the way we look at it.

Mr. SMITH. Mr. Chairman, if I could just follow that up. I know my time is up.

Mr. Attorney General, let us assume that we go through this—that this bill is passed, that block grant program goes into effect. We already get  $x$  amount of dollars under the block grant program.

The chairman pointed out more specifically that generally under these legalization or amnesty programs, sometimes only as much as 10 or 15 percent of the people eligible come forward, meaning that a large number of illegal aliens still remain in the underground, do not pay taxes, do not get involved in the mainstream.

These people are still a national problem. I don't care how you want to convert that into a local problem when 200,000 refugees wash up on shore in just a few weeks in any given State. That, sir, is a Federal problem, in my estimation. Citizens of that State shouldn't have to be asked to take the responsibility for them.

Now, assuming all of this work, we provide services, and then one day the block grant runs out. Do we just close our eyes, shut the door, and tell these people we're sorry? We had a large outbreak of tuberculosis in Florida, but we ran out of dollars, so we're just going to stop providing medical treatment; or we're not going to educate the children because we've taken it enough and there's no money coming in from the Federal Government.

You know, the block grant programs are always a wonderful way of shifting responsibility, "Give them the bucks and that's it." But when that money runs out, what are we going to do? We'll fall back on the same problem. A humanitarian need and an actual physical need and actual medical need, and no help again.

I frankly think, Mr. Attorney General, that you are abrogating your responsibility in the future the same way you have abrogated it now, and I am extremely unhappy about that.

Attorney General SMITH. Let me just correct the record to a certain degree here, and that is that the Federal Government did bear the burden in connection with the Mariel boatlift. I don't remember exactly the term that was utilized—legal entrants, Cuban-Haitian entrants. The Federal Government bore the burden of carrying those people. That, of course, was the principal influx into Florida. Since that time, because of measures we have taken, that influx has been substantially diminished.

In terms of the overall relationship of Federal, State, and local government concerning welfare generally, that, of course, is another matter.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. MAZZOLI. I thank the gentleman, and thank you, Mr. Attorney General.

Just a couple of quick questions.

Mr. Attorney General, when your Immigration Service comes up on the Hill, I'd like to have some figures as to the number of people it would take to patrol the border adequately. Now, it would never be hermetically sealed. It cannot and should not be. At the same time, it ought to be patrolled better than it is today—and I think the gentleman from Texas is getting into that.

I would like to have some hard figures. I have some data, without even putting it into the record, that we have developed. But I think when your people come up they ought to have that information for us. I think it is the disposition of this subcommittee to put something in the bill, in order that the Immigration Service can answer the question about actually policing the border and interior. Unless you do that, the legalization programs and other pro-



grams are perhaps going to act as inadvertent lures, and we don't want that to exist.

Attorney General SMITH. We'd be glad to obtain that.

Mr. MAZZOLI. Mr. Attorney General, would the administration support a one-date legalization program?

A one cutoff date legalization program. Currently there is a two-tiered program. The bill before us contains two dates—1977 and 1980. But some have proposed 1981, one date; some proposed 1982, one date; some will probably propose 1983, one date.

Would the administration support a one-date system, assuming there could be some very rigorous screening of the people who have come here before that date, not so much for residency, because that would in effect end the residency as one big requirement, but more for their work habits, their personal habits, their track record for having run afoul of the law in the time they've been here, the likelihood of not being public charges.

Is there a way to handle this with one date with sufficient scrutiny of the people who would be here prior to the single date?

Attorney General SMITH. That is a very difficult question to answer alone.

Mr. MAZZOLI. Perhaps you could supply it.

Attorney General SMITH. It would depend on the date, it would also depend on the overall program.

Our original proposal you could call a single-date proposal. That is the one that the President's task force submitted, but with some variations. But I don't think you can answer that question except in terms of the overall program. We'd be glad, certainly, to discuss that.

Mr. MAZZOLI. Would the administration support a sunset provision on employer sanctions?

Attorney General SMITH. We do not think that that is the way to go as far as this program is concerned. We think if there is a problem—and we don't think there is a problem because we have looked into that carefully—but if there is a problem that the sunset provision is designed to cure, I think it should be cured in the legislation. To have a program such as this sunset in a few years, to me just does not make sense. We are talking here about a long-term public-interest program which, to be sure, cuts across a host of short-term special interests, I guess you'd call them. We all have viewpoints across the spectrum on programs such as this.

And I think when you consider the effort that has gone into this bill, not only the original Select Commission and the President's task force, and then what happened during the last session of Congress—it seems to me with that extensive consideration, we should be able to come up with a program that we can install as a permanent program. I think the country badly needs that, and that's what I think we should go after.

Mr. MAZZOLI. Thank you. My time has expired.

Does the gentleman have a comment?

Mr. LUNGREN. I'd like to just comment on the gentleman from Florida's comments. Florida is obviously very directly impacted by the illegal immigration. It was highlighted by the Cuban-Haitian experience. And I guess that's what showed what you had to do to move around this place.



In California and the Southwest, per capita, in terms of total numbers of illegal aliens, we have far more than any other region. When it was merely a Southwest experience there appeared to be very little action in other parts of the country toward moving on the immigration issue. Unfortunately, it took the Mariel boat crisis to make it a more nationalized issue.

Mr. Attorney General, in terms of what you have said about opposing exemptions to the Federal benefit ineligibility set forth in H.R. 1510, I would just like to followup on what Mr. Fish said. Many of us felt that that was the bottom line that we had to provide. And that includes those of us who do not support the idea of, quote/unquote, "full reimbursement for State and local cash and medical assistance to legalized aliens," despite the fact that certain communities and jurisdictions in my area are shouting for it. I think you could make a legitimate argument that it is extremely difficult to ever determine, frankly, what is the net cost to a local jurisdiction. Because many of these people who are already here, and have been for many years, do work, do contribute, and do pay taxes.

But I do think the bare minimum that would be required for many of us would be the initial exemptions we have, that is, the Cuban-Haitian entrants—because that was a specific program—and the program of assistance for the aged, blindness, and disability, and also because of public health, for serious illness and injury.

We tried to construct that as carefully as possible and as limiting as possible to take care of the true needs and the extraordinary needs that would impact on a community. And many of us were very much willing not to go with the full reimbursement but in lieu of that have the block grant approach. Perhaps that sort of combination, that exemption for those extreme examples, and then the block grant might be a compromise.

Mr. MAZZOLI. Thank you.

The gentleman from Texas.

Mr. HALL. I have no further questions.

Mr. MAZZOLI. Mr. Attorney General, one last question. I read in the morning paper that concerns have been raised about the potential for local law enforcement of immigration laws.

First of all, I'd like you, if you could, through your Immigration Service, to send us a copy of the material when it becomes effective this week. It is my position that State as well as local enforcement of the Nation's immigration laws is not contemplated; that should be the responsibility of Federal officials. I wonder if there is any clarification needed today, or perhaps you could send us some information.

Attorney General SMITH. Well, the thrust of that, Mr. Chairman, is that in various areas of law enforcement we are emphasizing cooperation and coordination with State and local law enforcement authorities. That certainly is true in the drug area. It only makes sense, since the INS is engaged in law enforcement, for the INS to do the same thing we are doing in other areas of law enforcement, which is to cooperate. This does not mean we are going to deputize State and local law enforcement people to become INS agents.

Mr. MAZZOLI. You are not delegating your responsibilities to them.

Attorney General SMITH. No, but there is no reason why in this law enforcement effort we shouldn't cooperate with State and local people, the same way we do in every other area of law enforcement. That is particularly so since we are now emphasizing that.

You are probably familiar with our law enforcement coordinating committees where each of our U.S. attorneys is making a concentrated effort to work with his State and local counterparts to pool resources and develop local priorities. And it just doesn't make sense in the law enforcement area involving INS to treat the situation any differently. That is really the thrust of that action.

Mr. MAZZOLI. The gentleman from California.

Mr. LUNGREN. Mr. Chairman, if I could just comment on that. Just a cautionary comment. I know in our area of the country many of the local jurisdictions of law enforcement were very concerned about the fear that people in the illegal community or undocumented community had about approaching local law enforcement with complaints of victimization. That is, they were afraid to come forward to point out people had taken advantage of them in a criminal sense because they were afraid they would then be revealed as being here illegally.

And I think we do have to be concerned about that. I think it's slightly different than other law enforcement mechanisms. We all recognize, and you said it here before, the victimization of those people who have been here for many years but here on an illegal status. I hope we are not moving in a direction which will make it more difficult for them to go openly to local law enforcement and complain about drug problems or complain about organized crime activities in their area by virtue of the fact that they would fear to be identified as being here illegally, and instead of getting help from local jurisdictions be on the way back to Mexico or Honduras or Canada or wherever.

Mr. MAZZOLI. I thank the gentleman for his comments.

The Attorney General is excused, and thank you very much for your helpfulness.

Attorney General SMITH. Thank you, Mr. Chairman.

Mr. MAZZOLI. Our friend from New Mexico, Congressman Lujan.

Let me welcome our friend. You have been very patient today. As you have heard, there are no easy answers.

Without objection, your statement will be made a part of the record.

#### TESTIMONY OF HON. MANUEL LUJAN, JR., REPRESENTATIVE FROM THE FIRST DISTRICT OF NEW MEXICO

Mr. LUJAN. Thank you very much, Mr. Chairman.

Before proceeding with my statement, I suppose I am here this morning partly because during the discussion and the votes taken during the lame duck session on the immigration bill, I came out in opposition to it and, of course, at that time I was told, "Now, where were you? We didn't know that you guys were out there in opposition to it." So in self-defense I thought I'd better come up early and we'd discuss it.

Mr. Chairman, there is no question that our immigration laws and procedures need some revision and guidelines that are fair and



equal to all who wish to join the American experiment. However, there are some provisions within this bill that disturb me, and I would like to address these problem areas.

One aspect of this bill, I believe, is insulting to each and every citizen of this land of free people—a national identity card. And you will argue with me that you do not have an national identity card provision in the bill, but there is a provision where I must show documentation of being legalized as a citizen before I can be employed.

For as long as I have been politically aware, I have heard office-holders and candidates for office brag about how the United States of America is a free country, where the citizens are not required to show documents to Government authorities. In every speech we have also compared this fact to Communist countries that do require all of their citizens to be documented.

I, personally, and many thousands of my neighbors and relatives in the Southwestern part of the United States are unique to immigration policy. Many of our ancestors were living here about 200 years before the Pilgrims found their way to Plymouth Rock. Nevertheless, this is a Nation of immigrants. More than any other country, our strength comes from our own immigrant heritage and our capacity to welcome those from other lands. Our philosophy cannot allow us to greet them with an identity card, Mr. Chairman.

As I look at the names of the subcommittee members—Mazzoli, Lungren, Frank, McCollum, Hall, and the witness, Lujan—it is apparent that no nationality has a claim of dominance over any other. Yet, if we begin issuing national identity cards, it will imply a class of citizenship. In this country we do not have classes of citizenship. The bottom line, Mr. Chairman, is that required documentation is abhorrent to our nature as a free people.

Another point of objection in this bill is wiping away the responsibility of those persons who entered this country illegally. What we would be doing is to reward those people who broke our law and punish the thousands of people waiting patiently to enter this country in a legal manner. Somehow, to my sense of justice, that just doesn't make sense.

Mr. Chairman, I feel that we have to look at the whole picture before we make such stopgap changes in the entire legal code. This is not a perfect world. There are oppressive governments that enslave their citizens. This country has always stood as a beacon of individual liberty and justice. But commonsense tells us that we cannot support the population of the entire planet within our borders, because the rest of the world does not promote our ideals and principles. We are not the only free country on Earth. The responsibility for human care and concern must be shared. But the greatest concern that this Nation can show to oppressed peoples is to export our ideals as we have had a tradition of doing. We must stand up and fight tyranny where it exists. If our only policy to oppose tyranny is to enlarge our population with refugees, we will eventually sink our own ship or State and lose the battle for individual liberty entirely.

There are some countries with whom we have a special relationship. Mexico and Canada, as historical friends and neighbors, are



among them. With these nations our immigration policy should reflect this relationship.

Two years ago, testifying before this subcommittee, the Attorney General of the United States said that "We have lost control of our borders." He said that we have pursued unrealistic policies and failed to enforce our laws effectively. He said that we must face reality and more effectively enforce our laws. It seems to me that this approach makes sense. We must enforce our existing laws, rather than give up, say it doesn't work, and write new laws. And if the new laws call for national identity cards and blanket amnesty for those who broke the law, then we have not improved the law but harmed it.

Thank you, Mr. Chairman.

[The complete statement follows:]

STATEMENT OF HON. MANUEL LUJAN, JR.

Mr. Chairman, thank you for the opportunity to testify before this Subcommittee on the Immigration Reform and Control Act of 1983. There is no question that our Immigration laws and procedures need some revision and guidelines that are fair and equal to all who wish to join the American experiment. However, there are some provisions within this bill that disturb me and I would like to address these problem areas.

One aspect of this bill is insulting to each and every citizen of this land of free people. A National Identity Card. For as long as I have been politically aware, I have heard office holders and candidates for office brag about how the United States of America is a free country where the citizens are not required to show documents to government authorities. In every speech we have also compared this fact to communist countries that do require all of their citizens to be documented.

I personally, and many thousands of my neighbors and relatives in the Southwestern United States are unique to immigration policies. Many of our ancestors were living here for about 200 years before the Pilgrims found their way to Plymouth Rock. Nevertheless, this is a nation of Immigrants. More than any other country, our strength comes from our own immigrant heritage and our capacity to welcome those from other lands. Our philosophy cannot allow us to greet them with an identity card. As I look at this Subcommittee with names like—Mazzoli, Lungren, Frank, McCollum, and the witness, Lujan—it is apparent that no nationality has a claim of dominance over any other. Yet if we begin issuing national identity cards, it will imply a class of citizenship. In this country we do not have classes of citizenship. The bottom line, Mr. Chairman, is that required documentation is abhorrent to our nature as a free people.

Another point of objection in this bill is wiping away the responsibility of those persons who entered this country illegally. What we would be doing is to reward those people who broke our law, and punish the thousands of people waiting patiently to enter this country in the legal manner. Somehow, to my sense of justice, that just doesn't make sense.

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Mr. MAZZOLI. I thank you very much, Manuel.

You talk about the national identity card, and you say required documentation is abhorrent to us, to our country, and our philosophy. Do you equate the responsibility to provide documentation to get a job with this national identity card? Do you consider them exactly the same thing?

Mr. LUJAN. I think so. I didn't even have to produce—I guess I did; I was going to say for the job that I now have—proof of citizenship. I did have to do that for this particular job. But for no other do you have to do that.

Mr. MAZZOLI. When you go back home and you buy something at the store, and in this credit card society you show a credit card and they say, "That's not enough."

I got hassled the other day at one of the stores here in town because I gave my credit card from their company, which they could have put in their machine and verified what my balance was, but she asked for something more. She asked for my driver's license, and it had to be a driver's license with a picture, which Kentucky happens to issue. I argued with her for a few minutes, but because I wanted the goods I had to give her the card.

But we do that day in and day out right now. Is there some distinction with a national identity card?

Mr. LUJAN. I think so. I don't have to have a pair of Levis from J. C. Penney so I don't have to show them my driver's license if I am going to make a check or whatever the case may be. But I do have to have a job. I look at that more as a right that I have as a citizen of this country to have that job, and to have to prove that I'm a citizen of this country in order to be able to exercise that right—there is a difference between the two, although I can understand what you're saying. I'm not here to tell you that it's an easy problem.

Mr. MAZZOLI. You started out by saying that, and I appreciate it. It is a very ticklish and nettlesome problem, to say the least.

What the subcommittee endeavored to do, which of course you recall from attending the debates last year, was to draft a bill which not only assures people who say, "We will be singled out for examination because we don't look the same or sound the same," whatever that all means. We said, "Therefore, everybody has to be asked."

And then we say, "What are they going to show?" We say, "We don't want any national ID card which becomes some kind of an internal passport." So we said, "Let's use what you normally have—passport, birth certificate, driver's license, ID card issued by a State, social security card—things like that." We only make exceptions for older people and younger people who may not have these.

So we tried our best to thread our way through that minefield, and obviously we haven't done so satisfactorily, at least for now. But again, I think it isn't because the committee hasn't been care-



fully cognizant of the pitfalls. If we go too far we say, "There is one solution here. Make everybody prove who they are and that will solve the problem." So we try to keep rein on that easy-fix solution.

Mr. LUJAN. There is no question in my mind that you have improved it. Even as I was listening to the testimony of the Attorney General and the questioning by Mr. Lungren and all, there is no question that there is that reference, there is that feeling that you are going to have to carry something that proves you are a citizen of this country. Maybe it's because it will happen to some of us more often than it will to others.

Mr. MAZZOLI. I understand that, and I thank you.

We certainly had some very poignant testimony over the last couple of years from people who have personal experiences in being singled out, so we don't want to add to the ordeal.

The gentleman from California.

Mr. LUNGREN. Thank you, Mr. Chairman.

Thank you for appearing, Manuel.

Let me just ask you: Do you think it's more of a restriction on one's right to privacy and one's right as a citizen, or as a noncitizen legally allowed to live in the United States, that you be required to have on your person a driver's license. Is that less or more restrictive in terms of right to privacy than a system where you are required to produce identification only at the point in time at which you apply for a job?

Mr. LUJAN. It is not as onerous to be required to have a driver's license, it seems to me. I am required to have a lot of different things—a particular piece of paper that I indeed do own this piece of property or this house or building or whatever I might have.

There are a lot of things that have nothing to do with proving citizenship, only that you have complied with all the rules and regulations and taken the training so that you are capable of operating that motor vehicle.

I look at that as a little different situation.

Mr. LUNGREN. I understand. But most States have an affirmative obligation that you have that on your person. If you are driving down the road perfectly legally, not drunk, not doing anything wrong in terms of your driving, but by some happenstance an officer—he can't legally stop you but if he happens to engage you as you stop your car—stops you and you don't have that driver's license on your person, you can be hauled into jail for refusing to have that license, even if you were not doing anything illegally.

I understand what you're saying about a national ID card, but this in no way is a national ID card. You present it one time.

Mr. LUJAN. It would have to be more than a driver's license.

Mr. LUNGREN. What about a social security card?

Mr. LUJAN. I envision it as being something more than a social security card. If I want to get a job right now, I have to show that or at least give my number.

Mr. LUNGREN. What if we moved in the direction of enhancing the counterfeit-proof social security card, and at the time you apply for your social security card they do a little bit better check than they do now. Now they ask you a question whether you're here legally—not whether you're a citizen but whether you are a citizen or here legally.



Would that have the same onus that you see with a, quote/unquote, national identification card?

Mr. LUJAN. No, if that is the direction that it takes. But first of all, I think the fallacy is you are not going to move in the direction of anything that cannot be counterfeited.

Mr. LUNGREN. I said "less counterfeit." Obviously there is nothing perfect.

Mr. LUJAN. Yes, and Social Security could make a better check of your credentials, so to speak. Certainly that is a lot less onerous than requiring me to carry my birth certificate or whatever.

Mr. LUNGREN. Interestingly enough, I think the reason why we have those two or three documents that you have to have is because we couldn't get agreement on a social security card or any card. And many people thought this was a sort of half-step toward moving to an enhanced social security card.

Mr. LUJAN. As I said to the chairman, I think you moved in a good direction. Good effort is being made.

Mr. LUNGREN. You have often talked about how we can't have all the whole world in the United States or half the world in the United States. Can you give us an idea of what mechanism you think we ought to move toward if we are going to do something about demagnetizing immigration?

Mr. LUJAN. Oh, I could give you my whole theory on how we are going to make this whole thing work. How practical it is I don't know. If you want to go along those lines, you have to start by stronger enforcement, first of all. You've got to be able to stop people from just being able to walk in.

Beyond that—and if it were mine to do, I would make, for example, the entire Western Hemisphere almost as we do in the United States, that you could go from country to country and work, trade, or whatever. I would like to get it to that point. I don't think that is practical.

Mr. LUNGREN. Open border?

Mr. LUJAN. Just about, yes.

Mr. LUNGREN. I remember when Mario Obledo, who was then the Secretary of Health and Welfare for California, appeared before the Presidential Commission hearing in San Francisco just prior to my testimony, and he said we needed to have an open border between the United States and Mexico, at which point someone said to him, "The problem now is Mexico doesn't have a very secure border on its southern flank."

And he said, "Well, we'd have to secure that border."

Mr. LUJAN. I'm talking about the entire Western Hemisphere, all the way from Canada down to the tip of South America.

Mr. LUNGREN. How many wouldn't come here?

Mr. LUJAN. Well, there would be a limit. Also, that would give people an opportunity to increase the employment opportunities in some of those other countries also. They would probably object to it more than we would, the other countries.

Mr. LUNGREN. We could go on and on, but would you go from El Salvador to Nicaragua or Costa Rica or Mexico, or would you go from El Salvador to the United States?

Mr. LUJAN. Or Argentina or Brazil.

Mr. LUNGREN. Well, I'm not sure—

Mr. LUJAN. Well, it's like many people come to California for employment.

Mr. LUNGREN. More are coming all the time. We prayed for rain on New Year's Day so those new Westerners might see some rain during the Rose Bowl.

Mr. LUJAN. We call them Easterners no matter where they're from.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Texas.

Mr. HALL. I agree with what the gentleman from New Mexico says with reference to the ID card, but I have some problem following what he says about having an open border between this country and those countries south, because I think if you had that we would have an unholy mess on our hands, more than we have now.

Mr. LUJAN. We're talking about an idea. Mr. Lungren asked me how I would solve the problem, and that is the ideal way to solve it, to make everybody rich and prosperous, and then open your borders and then nobody would go.

Mr. HALL. Thank you.

Mr. MAZZOLI. I thank the gentleman.

May I ask you—maybe not now, Manuel—but one of the problems we faced last year in trying to talk to the Hispanic caucus, at least before, was what you guys argued was the sending nations problem: "You are never going to solve this problem until you take care of the sending nations."

The truth of the matter is, the sending nations or, as you say, all the way from Canada down to the tip of South America—we could probably never, if we spent the rest of our lives devoted to it, solve the problems of sending nations. But if you have some thoughts on what are feasible programs, things you may have come in contact with in your travels as a man whose own heritage is in this area, we would be very interested to hear them.

The gentleman from California has been very innovative and his approach is to setting up bilateral activities between Mexico and the United States. But even that wasn't sufficient to satisfy some of the concerns of our friends in the Congress.

So anything you can give us on that point of how we help sending nations, not just Mexico—but of course that is one of the major areas in which people find their best interests lie in leaving the country—we'd appreciate it. And we thank you very much for your testimony.

Mr. LUJAN. Could I just apologize for appearing to sound so negative.

Mr. MAZZOLI. No. Everybody else does. You don't want to separate yourself from the herd, do you? You don't want to have that kind of a complex. The world is crazy enough.

Mr. LUJAN. Maybe it's a frustration. I don't have any real final solution as to how we solve the problem. But I see us moving in a direction like, "We are going to have this bill. Therefore, once we pass the bill, we will declare the problem solved. And in 5 years we are going to have the same thing."

Mr. MAZZOLI. We pursue the George Aiken impulse around here. We declare things better and that's the solution. So in matters of last resort, always look to George Aiken.

Mr. LUJAN. Thank you very much.

Mr. MAZZOLI. The committee stands adjourned.

[Whereupon, at 12:48 p.m., the hearing was adjourned.]



# IMMIGRATION REFORM AND CONTROL ACT OF 1983

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WEDNESDAY, MARCH 2, 1983

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES, AND INTERNATIONAL LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 9:10 a.m. in room B-352 of the Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Lungren, McCollum, Fish, Hall, and Smith.

Staff present: Arthur P. Endres, Jr., counsel; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. The subcommittee will come to order.

This is the second day of our planned series of hearings on the Immigration Reform and Control Act, H.R. 1510.

Today we have as our leadoff witness our esteemed colleague from the Judiciary Committee and my personal good friend, Bill Hughes, from the State of New Jersey.

Bill, your statement, without objection, will be made a part of the record, and you may read it and proceed as you wish. Thank you for taking the time to join us.

## TESTIMONY OF HON. WILLIAM J. HUGHES, REPRESENTATIVE FROM THE SECOND DISTRICT OF THE STATE OF NEW JERSEY

Mr. HUGHES. Thank you, Mr. Chairman, and I am going to spare you my reading the statement.

Mr. MAZZOLI. Those golden, dulcet tones.

Mr. HUGHES. Let me say that I really have enjoyed working with you since first coming to Congress. I don't think anybody has worked any harder on legislation than you did on the immigration bill and seen it torpedoed in the closing days of the session. I know that had to be quite frustrating and painful. But I want to commend you: I think that throughout that period you probably maintained your cool more than most Members of the Congress could have under the circumstances.

Mr. MAZZOLI. Thank you very much, Bill. Actually I had a lot of help from a lot of people. The subcommittee itself is extraordinary and did yeoman work. You contributed greatly because at the full committee markup we had a very interesting and I think a very informative session. Of course, anything that bids to change, for

the first time in 30 years in a fundamental way, the immigration laws of this land could not be expected to be done very hurriedly. But I thank you for those observations.

Mr. HUGHES. Well, Mr. Chairman, you and the committee worked very, very hard, the staff did excellent work, and I commend you. I don't envy you the task you have ahead, because there obviously is no clear consensus. I wish you well in trying to develop a consensus on what is probably one of the single most important issues facing this Congress—immigration and naturalization reform.

I only have one point, and it's a point I'm sure some Members were already tired of hearing when it came to the full committee, prior to the time it came to the floor; and at the time it was on the floor; and that is, I don't think I could support legalization unless I saw a bona fide effort on the part of this administration and the Congress to put in place the enforcement mechanisms that insure that we won't be doing the same thing in legalization 5 or 10 years down the pike.

That is what the Select Committee recommended, and I think they are right on target.

I realize that will not get on board all the various groups who have all kinds of reasons why they didn't support the legislation in the last Congress, even when they recognized that there was no ideal world and that we had to make a lot of painful decisions.

But it seems to me that some legalization process has to be part of any comprehensive bill.

I think first and foremost we have to make a commitment to seal our borders and do a better job of bringing the Immigration Service into the 20th century. We are developing that capability and we have seen some progress in trying to beef up the enforcement mechanisms. But, Rom, it is minuscule compared to the need.

It's similar to my own Crime Subcommittee: The administration came in with additional slots for law enforcement agencies—FBI, Drug Enforcement Administration, BATF, the Coast Guard—but we are operating in the margin and we can't get a handle on the problems unless we make major commitments.

I'm talking about resources to provide the computer capability. We can provide the tools in endeavoring through identification to identify those who are here as visitors, in order to do a better job of tracking them while they are here. We can do a better job on the border. But we can't do it unless the administration and the Congress are prepared to fund it realistically. And I can tell you I will have a hard time supporting any form of amnesty or legalization until that mechanism is in place.

I support the work sanctions, but again, that's easy for me to support. But that in itself is not sufficient without doing a better job at the borders, without doing a better job of tracking while in this country, without making the commitments that we have to make.

That's the only point that I made in my statement, and I look forward to working with you in implementing that policy which I think is essential.

[The complete statement follows:]

STATEMENT OF HON. WILLIAM J. HUGHES ON THE IMMIGRATION REFORM AND CONTROL ACT OF 1983

Mr. Chairman: I want to thank you and the members of the Subcommittee on Immigration, Refugees, and International Law for inviting me to submit comments on the "Immigration Reform and Control Act of 1983," which will make fundamental changes and improvements to our immigration laws. I would also like to take this opportunity to comment on the fine work which you and the other concerned members of the subcommittee did in the 97th Congress in developing this important legislative proposal. I regret that, despite your tremendous effort to move the immigration reform bill prior to adjournment in the last session, the House of Representatives was unable to give the legislation the important attention which it most certainly deserved.

As you are well aware, we are engaged in a great debate which will determine U.S. immigration policy for many years to come, perhaps well into the next century. The immigration reform legislation which the subcommittee is considering will directly affect millions of individuals who look toward this country as a source of hope, a place in which they can build a new life.

As all of us know, immigration reform is long overdue. But as the intensity of the current debate on the subject and the large number of amendments which were proposed when the bill came to the House floor last year clearly indicate. There is no clear consensus on how to best go about the task of controlling immigration, securing our borders, and dealing with the large number of illegal aliens already in this country.

As a member of the Judiciary Committee, I had the opportunity in the last Congress to participate in the heated debate surrounding immigration reform legislation. Mr. Chairman, you have been one of the first to admit that this is not a perfect bill, resolving everyone's concern. Yet the immigration reform proposal is, nevertheless, an effective compromise, representing many hours of work on the part of the distinguished chairman, members, and staff of the Immigration Subcommittee as well as others who have made a commitment to updating our immigration laws.

Despite my general support for the thrust and intent of the legislation, I have some concern with regard to the amnesty provisions in the bill. As I indicated during Judiciary Committee markup on the immigration reform bill last year, I strongly believe that legalization without increased immigration enforcement and border control activity will only encourage thousands of new immigrants to come into this country illegally, and will require another amnesty program in the near future.

The Select Commission on Immigration and Refugee Policy clearly recognized the need for stronger border enforcement mechanisms in their report entitled, "U.S. Immigration Policy and the National Interest." The 1981 report specifically recommended that legalization not proceed until appropriate enforcement mechanisms have been instituted. The Commission similarly recommended that border patrol funding levels be raised to provide for a substantial increase in the numbers and training of enforcement personnel. Unfortunately, the current administration has been unwilling to provide for a sufficient increase in the numbers of border patrol, investigations, inspections, and anti-smuggling personnel to assure that the numbers of aliens entering the country will be significantly reduced.

The United States desperately needs a workable solution to the immigration problems facing us today. The implementation of an effective employer-sanctions program and the legalization of many of those who have resided in this country before 1980 are only part of the solution. To assure that illegal immigration does not mushroom into an uncontrollable situation, however, we must also make the commitment to give the INS the resources it needs to patrol our borders and enforce the immigration laws. Without this final element, legalization and employer sanctions outlined in this legislation will be meaningless.

I firmly believe that the far-reaching immigration problems facing this country must be resolved in a timely and comprehensive manner. A worldwide recession, coupled with increased opportunities to move across borders, has created overwhelming immigration pressures. Border agents are virtually overrun, and immigration inspectors cannot control tourists and visitors who enter the United States as "nonimmigrants" and then remain. Overworked and undersupported INS investigators cannot curtail the booming business in alien-smuggling, false documents, marriage frauds, and the placement of undocumented aliens in U.S. jobs.

As the Judiciary Committee considers this important legislation further, I look forward to working with you and the other distinguished members of the committee to insure that the Immigration and Naturalization Service receives the resources it



needs to control illegal immigration and keep track of aliens already in this country. I hope that you will join with me to help implement the Select Commission's recommendations, and provide the resources needed to secure our borders and our law enforcement resources up to the level needed to control illegal immigration. Unless we can do that, Congress may again be faced with the need to institute a massive legalization program. Let's not allow that to happen without making every effort to give the Immigration Service the support it needs to do the job that the Congress and the American people expect.

Thank you.

#### HUGHES ASKS TOUGHER IMMIGRATION ENFORCEMENT

WASHINGTON, D.C.—Congressman Bill Hughes (D.-N.J.) has warned that any amnesty program for illegal aliens, or laws to punish the employers of illegal aliens, will be fruitless unless tougher measures are taken to police the Nation's borders.

In testimony before the House Judiciary Subcommittee on Immigration, Refugees and International Law, which is considering immigration reform legislation, Hughes said the Immigration and Naturalization Service (INS) must be given greater resources to stem the flow of illegal aliens.

"Amnesty for illegal aliens without increased immigration enforcement and border control activity will only encourage thousands of new immigrants to come into this country illegally," Hughes declared, "and will require another amnesty program in the near future.

"None of us want to be back here in 5 years only to find that even after amnesty we have uncounted millions of new illegal aliens within our borders," he said.

To bolster his contention, Hughes cited the 1981 recommendations of the Select Commission on Immigration and Refugee Policy which stated that legalization of undocumented aliens not proceed until appropriate enforcement mechanisms have been instituted.

"Unfortunately, the current Administration and its predecessor has been unwilling to provide for a sufficient increase in the numbers of border patrol, investigations, inspections and anti-smuggling personnel to assure that the numbers of aliens entering the country will be significantly reduced," Hughes said.

"As a result, border agents are virtually overrun, and immigration inspectors cannot control tourists and visitors who enter the United States as 'nonimmigrants' and then remain," he said. "Overworked and under-supported INS investigators cannot curtail the booming business in alien-smuggling, false documents, marriage frauds, and the placement of undocumented aliens in U.S. jobs."

**Mr. MAZZOLI.** Let me say this, Bill: as a result of the concerns which you expressed very vividly and forcefully at the full committee of markup, and in floor debate, we have been—at least I have on my own behalf and I believe the subcommittee shares my view—sympathetically disposed to placing right in the bill the personnel, the financial resources, the techniques and some of the mechanisms that will be needed not only to enforce at the borders and in the interior, but also to speed up the paperwork handling for the regular INS activities. Of course, it is especially important for those which are under the bill, the legalization and employer sanction.

Based on yesterday's hearings, I believe our subcommittee is sympathetically disposed to it. You have focused on this particular aspect, the need to put our money where our mouth is. You have given us a lot of food for thought.

The Los Angeles Times editorial of December 27, 1982, supports our bill, but they suggested three or four areas that should be improved or at least attended to in the new bill.

Their leadoff recommendation is instructive here:

Now that Simpson-Mazzoli will have a chance to refine their bill even further, they should make several changes that should help it with enactment next year. They should include budget appropriations to pay for the many reforms envisioned by the act.

They go on to talk about that part of INS charged with carrying out the responsibilities in the act, and the regular responsibilities of enforcing the border.

So I think this discussion that began last year is certainly going to yield fruit this year. I look forward to your help, Bill, because we are not talking about peanuts. We're talking about really big money.

For example, without even half trying, our staff has developed the need for perhaps as many as 2,500 additional people for the Immigration Service in its various activities, costing as much as \$160 million.

I appreciate your comments and would devotedly ask for your help when it comes time to propose to our committee, and to Congress which is wrapped up in economizing and retrenchment, that we cannot be pennywise and pound foolish here. By saving a few cents here, we are going to condemn future generations, to a totally chaotic immigration policy and totally uncontrollable borders, and neither one of these is desirable.

You say you would have a hard time voting for legalization, a hard time voting for the bill, unless you felt we were putting our ducks in a row, unless you felt that we were taking the proper stance to enforce the law and secure the borders. We may not be able to reach a point where empirically we can test out the fact that all people who are seeking entry are being turned away and apprehended.

If this money were put in the bill, if we put some positions in the bill, would that allay your fears? Would you then be willing to kind of take a leap in the dark on the basis of what these people and what this money might yield in the future, rather than waiting for a time when somehow some independent group says, "Yes, now that law is enforceable"? What is your feeling?

Mr. HUGHES. I don't think there is a standard you can measure it against. When I was drafting an amendment that would put some enforcement money in the budget, we wrestled with the question of how you determine whether you have done enough. You know, what is enough?

But I would say, probably yes. I'd have to see in what context. I would much prefer to see us tie the commitment resources to a sunset, for instance, of the employer sanction provision. For instance, I can see, not just in this administration but in future administrations, taking the one thing that everybody finds a little easier to support—except maybe the business community—and that is employer sanctions, and then forgetting about the commitment resources.

We are in for some trying budgetary times. I heard the policy last night, and I didn't hear anybody mention two areas I am concerned about—crime and immigration. Let's face it: during the budget debate last year, I listened for 3 days and I never heard anybody talk about commitment to immigration or crime. I heard a lot of other social and domestic programs mentioned, and not once did I hear immigration mentioned.

I would suggest that if you polled today, you'd find these two areas are right at the top of the economic issues: people are con-



cerned about both areas. So I would tie it to the employer sanctions; I'd sunset it, and make sure the commitment is there.

I would suggest we use the registry as a way of possibly going to legalization, tying legalization to the registry and moving it ahead. I don't see how we could process anywhere from 25 to 12 million illegal aliens, depending on what we find to be the situation, given the resources we have. I think a far preferable approach would be to use the registry, move it ahead in maybe two stages, and in the process put employer sanctions in, put the commitments into resources, at the border, for investigative resources, and computer computer capability to do the cross-indexing, the checking, and the tracking that has to be done.

Mr. MAZZOLI. Bill, I appreciate your saying that. I hope you would not totally end the possibility that you could support a legalization similar to the one in this bill of a single-track or two-track approach. If you had the opportunity to sit down with us and listen to some of the people talk about the question of legalization, it is an immensely difficult problem. My own personal judgment is just changing the registry date—though that certainly could clear up some of the underbrush and some of the more difficult older cases—it probably would not really solve the problem.

So I hope you would not totally, draw the line at not supporting a bill that has a very, very generous kind of legalization program in it, more generous than just registry dates, though I do not think registry and legalization are mutually exclusive. I think you can have them both, as we have in the draft of our bill.

Second, as an articulate spokesman on the whole issue, I would hope that you could, when it comes time to take this bill to the full committee, help us make the point with our colleagues that to do this thing right, and to do it effectively, we must give the Immigration Service, which will be charged with the most responsibilities, the people and the money they need to do the job.

Mr. HUGHES. Mr. Chairman, I think you know, when the bill was before the full committee, a couple of us had key votes; and the fact that you and Dan Lungren have come out with a piece of legislation gives it a presumption of validity.

I would keep an open mind on that issue. I haven't had an opportunity to examine these painful issues like you have. You probably started out where I am now and ended up with no alternatives, and I recognize that.

Mr. MAZZOLI. We both do, I think. When you are faced with a concept of a generous legalization, something other than changing registry dates, you sort of instinctively or reflexively shrink from it, until you examine it to see how it fits in with the pattern.

Standing by itself, no. Nobody is for a stand-alone kind of legalization, as we are not really for a stand-alone kind of enforcement or a stand-alone kind of employer sanctions. But in a symmetrical package where they fit together and make a picture, like pieces of mosaic, then I think it is eminently supportable.

But as you say, the fact that the subcommittee is disposed to doing something along the lines of more money for INS certainly stems from the debate which began last year on this question. Unless we put money in the bill, where people can see it and touch it and taste it, we are not going to get very far.



Mr. HUGHES. Sure.

Mr. MAZZOLI. The gentleman from California, our ranking member, is recognized for 5 minutes.

Mr. LUNGREN. Bill, we both appreciate the fact that you are stressing the enforcement side. I think we both come to that. I came to it when I was trying to answer a question from someone who was delivering a message from some constituents about how they were very concerned about legalization. And finally when I got down to it and said, "What are you going to do with these people?" they said, "Oh, no, we don't want to send them back, but you ought to have people on the border, you ought to have enhanced enforcement before you have that. Otherwise, the border will be inundated," as if it isn't already.

But I understood what they were saying, and finally I thought we might as well put it in. We are trying to move the Justice Department in that direction. I think we're nudging them along.

Mr. HUGHES. Good luck.

Mr. LUNGREN. One of the concerns I have is that you have always tied the legalization and enforcement sides together. I understand that. But here you mentioned, and in the amendment you had last year I recall you tied the increased numbers of people, increased enforcement, with employer sanctions. That is, as I recall, the way you drew your amendment last year that we considered. The sanctions would not go into effect until we had the enhanced manpower. And my question is: Why do you tie those together?

Mr. HUGHES. Because I know that's what the administration likes first.

Mr. LUNGREN. OK.

Mr. HUGHES. And the thing that they like least is spending any money.

It's my perception of where the support was lacking.

Mr. LUNGREN. Now, the other question is on registry. Something was brought up to us by the Attorney General yesterday that I had not even thought of. They indicated—of course they support a legalization program—stressing legalization, not amnesty—but they disagreed with us bringing up the registry date as we had in the bill last year and the way it's introduced now. One of the reasons they suggested was because if you bring the registry date up, there is no corresponding disability to receive welfare benefits as we put in the package with respect to the legalization program.

Have you thought about that at all? What are your thoughts about that?

Mr. HUGHES. I think we could cure that right in the legislation.

Mr. LUNGREN. My question is: Do you support the registry because that would allow them to have these benefits, or do you just think that's an easier way of doing it?

Mr. HUGHES. No; I think that's a more orderly way of doing it.

Mr. LUNGREN. The only problem, of course, with the registry is that it will require the same sort of processing that the other will.

Mr. HUGHES. I understand, but we can do it in stages.

Mr. MAZZOLI. We can do it all in stages; yes.

The gentleman from Florida is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

You will excuse me if I'm a little late.

Mr. HUGHES. Good morning.

Mr. SMITH. At 10 o'clock, we have a hearing on packaging?

Mr. HUGHES. Antitampering—Tylenol.

Mr. SMITH. You and I agree, Mr. Hughes, on some of the issues, especially in the area of enforcement and the fact that, quite honestly, the administration has shown a rather slow movement toward spending any kind of money.

What would you suggest in enforcement if we could not get the kinds of dollars that we know are necessary to put into the enforcement effort? What do you suggest as some possible alternative? Stronger sanction? Deterred effect rather than having to actually go out and do it?

Mr. HUGHES. I don't think there is any alternative. I think that the administration has finally moved away from this nonsense that we have to do more with less in the area of law enforcement. We have made some progress, but we are still operating in the margin. I don't think there is any alternative to spending the money and beefing up enforcement. The whole Justice budget is \$3.5 billion, compared to what?—\$270 billion for the military?

For the first time, the Attorney General compared our commitment to enforcement resources to our commitment to national defense needs in an editorial that appeared recently in the Washington Post. But the comparison is only in words thus far, because we are still catching up: we still don't have anywhere near the resources we need to do a decent job, not just in immigration but across the whole spectrum of crime issues. And I don't think there is any alternative.

Mr. SMITH. Now, in New Jersey you have some problem with reference to illegal refugees. They migrate from my area and generally tend to go up to New Jersey because of previous waves of migration.

Mr. HUGHES. That's mostly in northern New Jersey. The refugees we have are from northern New Jersey who come down to southern New Jersey. [Laughter.]

Mr. SMITH. We have that, too. Florida has that north-south syndrome.

But in your state, would I be correct in saying that the administration has also been lax in reimbursing the dollar amounts spent by State and local agencies to combat crime involving the refugees, health care costs, social welfare costs, et cetera?

Mr. HUGHES. No question about it. The Federal Government has been a terrible partner. I mean, this is a national problem, not a State or local problem. But many of the commitments that have been made have been made by the States. They don't have the resources either, but they have ended up with the problem. Yes, in the area of social services, whether it be education, public assistance, housing assistance, or any area you look, the States have had to pick up the shortfall.

Mr. SMITH. So you wouldn't be adverse, then, ultimately to not only an enforcement section in this bill, increasing the number of enforcing agencies and the numbers within those agencies, but also additional dollars in terms of enforcement?

Mr. HUGHES. No. In fact, I helped lead the fight last time to make that commitment.



Mr. SMITH. Thank you very much. I appreciate that.

Mr. MAZZOLI. I thank the gentleman from Florida and our other gentleman from Florida.

Mr. McCOLLUM. Thank you, Mr. Chairman.

I had an interesting lunch last Friday with General Chapman who at one time was INS Commissioner, and he made almost the same points that you're making. He is very supportive of this legislation we are working with, but the enforcement section he says is grossly missing, and he cited quite a few statistics that he had remembered from his days which really haven't changed that much over the years.

So I feel very sympathetic to what you're suggesting, and I certainly appreciate the fact that you have come here this morning to say it. As you know, I am personally opposed to the legalization section. I think the registry date satisfies that requirement. But I certainly don't think it does without an enforcement effort that is far, far greater than it is today.

Mr. HUGHES. That would be my preference, too, Bill. But I want a bill, and that's why, in response to the chairman's question, I kept an open mind. If that's the wisdom of the committee, I want to work with the committee in trying to get a bill. We need immigration reform in this country.

Mr. McCOLLUM. I agree with you wholly. Thank you for coming.

Mr. SMITH. Will the gentleman yield, Mr. McCollum.

Mr. McCOLLUM. I'm sorry. Thank you, Mr. Hughes.

Mr. SMITH. Mr. Hughes, are you aware that in this budget for Justice, in the enforcement section for INS, for instance, there has been no increase in positions whatsoever? In fact, a decrease in terms of the creeping inflation problem, et cetera?

Mr. HUGHES. Yes, we've lost ground.

Mr. SMITH. And that in Customs 1,775 positions have been cut for 1984?

Mr. HUGHES. Yes. As I say, those are the signs that would suggest to me that a sense-of-the-Congress resolution on this issue is not adequate.

There was a section in the immigration bill that in essence, was just the sense of the Congress. I don't think that is what we need: I think we need commitment of resources, and I think it has to be tied, as I have indicated, to the other sections of the bill that the administration and other groups would find attractive.

Mr. SMITH. Thank you very much.

Mr. MAZZOLI. Thank you.

Just another couple of seconds. I think it ought to be noted, to keep the record really balanced here, that the Immigration Service has more people actually in service now than they did before this particular committee began its work 2 years ago and in effect during the 97th Congress.

The reason in part they have not asked for more people is because they had a lot of authorized slots in the past that were never filled. Those slots are starting to be filled. And the information we have is there are 633 more full-time employees at the end of 1982 than there were at the beginning of 1982. So there is slow progress. It's not quick enough to suit me or you, Larry. And we are going to make sure that there is something else done on our bill.



But to give credit, with our support and with your support, Bill, and the Congress', there has been a trend upward finally in the enforcement and the service to—public. Not just enforcement, because the INS is more than just apprehending people; it is us taking care of naturalization papers and all of the other work they have.

Second, I will have sent over to your office, Bill, what I think is an excellent piece of work done by the INS, an implementation plan for this bill. The testimony that Commissioner Nelson will give later today will deal in very detailed ways with how the Service has been working for the last 6 months in setting up an implementation program.

Again, I am not sure they could do it without more money from us and more people, but to give credit where credit is due, they have endeavored to develop a mechanism which, if this bill is passed, would engage and would yield the results we want—an enforceable employer sanctions program, a useful and effective legalization program. I want to send it over just to have that as a background to show that they have not been twiddling their thumbs down there.

Thank you very much, Bill. We appreciate your being with us today.

Mr. HUGHES. Thank you.

Mr. MAZZOLI. Let me just make the run here. Congressman Leland, Congressman Mica, Congressman Daub, Congressman Fauntroy. It looks like we have reached a point for a slight recess.

This committee will stand in recess until our witnesses present themselves.

[Recess.]

Mr. MAZZOLI. The subcommittee will come to order.

We welcome Congressman Dan Mica from Florida. Dan, your statement which you previously filed will be made a part of the record, but you are free to read it or talk from it, whatever is your pleasure. We welcome you here today.

#### TESTIMONY OF HON. DANIEL A. MICA, REPRESENTATIVE FROM THE 14th DISTRICT OF THE STATE OF FLORIDA

Mr. MICA. Thank you, Mr. Chairman. With the fact that my comments will be inserted in the record, I'll just make a few brief comments, if I may.

Mr. MAZZOLI. Thank you.

Mr. MICA. First, let me commend you in particular and the committee for the work you have done. I don't think there has been a time in this Nation's history when we needed to act and act with more resolve than we do right now in the immigration program. I commend you. You have tackled the problem that heretofore—and those who have been in the Congress for the last dozen years recognize that—others shied away from.

Mr. MAZZOLI. We had expected you to be surrounded. We were hoping you were going to be surrounded.

Mr. MICA. I thought it might be the desire of the committee to keep me on an even keel.

Mr. SMITH. Mr. McCollum and I will gladly sit next to him on each side.

Mr. MICA. You're the two they don't want.

Mr. MAZZOLI. We have a perfect mix here. We have the left and right sides.

Mr. MICA. What I thought I would do, assuming my colleagues who oppose this measure may come in, is put this in a frame of reference that I think would appeal at least certainly to the people that I represent as well as others. Simply stated, the cost of the illegal immigration in this country is phenomenal. I think we mentioned in one of our earlier meetings that a study in Miami of 10,000 illegal immigrants cost \$10 million in a 1-year period.

Now, certainly it is ideal that we try to have as free an immigration policy as possible, that we try to accommodate every nation, people who are downtrodden and who want to come here. But we have reached a chaotic state, and if I could relate the Florida experience, the Miami experience, as a real rationale for moving now, because we have lost all sense of reason in many parts of south Florida. The citizenry is saying, "Lock the doors, put up the fences, keep them out."

Ten years down the road where we may not have a Congress right now who says that, we may indeed have a citizenry nationwide that will be saying that, and that certainly isn't what any of us want.

I think what we are trying to do is say we'd like to see a reasonable, rational, sane immigration policy. And I will go further than I ever have before on legalization and say this: Obviously with the emotion in our district we all have some concern in Florida. My concern is not to say that we need to just not look at the problem. I have tried to put it in this perspective.

Mr. MAZZOLI. We will fill Larry in with all the details.

There's a little bit of insider humor here.

Mr. MICA. That's right.

Mr. SMITH. Knowing Mr. Mica, I'm sure.

Mr. MICA. We do have to acknowledge that there are many here who will never return to their native country. If I had a preference, I would like to see us put in place the mechanisms to control our borders, to get everything set up, to make arrangements for the appropriate deportation or allowance for individuals to stay in this country—get that all set up, and then discuss whether or not there would be amnesty.

And I felt from the very beginning that there would be some feeling on the part of those in other countries—and we had this situation in Haiti, and I understand it happened in California—when there was a discussion of amnesty many thought if they could get here, for whatever misinformed reason, before whatever deadline, or even get here and postdate checks, they would be given that amnesty, and therefore we had greater flows of illegals prior to any legislation. We went through this a couple of times before.

So, yes, I will acknowledge we need to deal with that problem. In an ideal situation I would prefer to first put in place our controls, our procedures, so that we have a little different system than we have now; and second, a procedure for dealing with those who are already here. And that's a long way from where we started out.

But I do feel, No. 1, that we are in a position now, because you have done so much work on this bill, to have the first comprehensive reform that we have had in I think in my lifetime. I think it's needed. And to have the Miami experience very close to my own district, to see that if it does run unchecked, a future Congress will probably not be as reasonable, as rationale, and logical in their approach that there will be a call to close all the doors.

So if we can put something with this basis that you have put into it into place now, it may not please all groups on each side, but certainly I think it would be a beginning to bring order. And once we have that order in place, maybe a little more liberal thinking—I hate say that—

Mr. MAZZOLI. You hate the word.

Mr. MICA. A little more liberal thinking on the subject nationwide so we can continue to be the open and free society with regard to immigration that we always have been in the past.

I might indicate something that surprised a number of congressional leaders who visited south Florida. Some of the most vocal, emotional, and actually vicious comments about closing down our borders came from several different minority groups in my district who felt threatened.

So the point is it's not a matter of positioning blacks against whites or Hispanics against non-Hispanics or Haitians against Cubans or what have you. The result is there. We have had the problem. If we can bring some control, some order to it, I think it would be helpful.

[The complete statement follows:]

STATEMENT OF THE HON. DANIEL A. MICA, A REPRESENTATIVE IN THE CONGRESS FROM  
THE STATE OF FLORIDA

Mr. Chairman, Members of the Subcommittee. As most of you know, the South Florida area I represent suffered an emotional and economic trauma as the result of the unchecked flow of illegal migrants onto Florida's shores. At one point, that flow was estimated to be 2,000 illegal migrants a month. We must not permit such a situation to occur again. It is imperative that we reconsider our immigration policies, so long outdated and inadequate, and offer this nation legislation that can solve our current nationwide immigration problems. We must make certain that the experiences endured by Floridians because of the massive influx of migrants in 1980 will not occur again anywhere in this country.

Some of the immigration problems unique to Florida have been alleviated by a set of circumstances particular to our situation: The Mica amendment, which has stemmed the flow of refugees from Haiti—and an Administration focus on the problems in South Florida—have combined to reduce the immediate inflow problem. However, the consequences of the 1980 migration remain. The Cuban-Haitian entrants remain in our state causing a tremendous strain on state and local resources. The limbo status given to the migrants between May and October of 1980 leaves the obligation of care for them unclear. I have also learned from INS officials in Miami that the resettlement program, meant to ease the economic and social strain on Florida, does not seem to be working. Most of those immigrants who were relocated to other states are returning to Florida, and especially South Florida, for reasons of their own.

We cannot escape the complications and tensions born of an unplanned and unchecked migration: the competition for jobs and housing; the special needs for language training, job training, medical care and housing assistance. The drain on social welfare services and funds. No local or state government is prepared to accommodate such drastic change. No amount of compassion and human concern can resolve the matrix of problems resulting from inadequate and unworkable immigration policies.

We cannot afford a repeat of the international situation that plunged South Florida into chaos a few years ago. We are no better prepared today than we were then



to deal with the political, economic, and psychological consequences—and unless we pass major new legislation, various states in this nation face a repeat of our unfortunate experience.

For these reasons, I am here today to urge the Committee to report the Immigration bill as quickly as possible—so that Congress may consider the needed reforms and act in the interests of the American people. I believe that what the American people want is a policy that will bring immigration back under the control of their government, a policy designed to phase out illegal immigration and place reasonable limits on legal immigration.

Some disagreements may still exist with respect to certain provisions of immigration reform, but the momentum for passage—of a uniform and equitable package of legislation—is more compelling than the minor differences we may have. We cannot let another year pass without these necessary reforms.

Thank you for the attention this Subcommittee has directed to this most serious and imminent problem. I look forward to continuing to work with each of you as the Congress proceeds to review and rewrite our immigration laws.

Mr. MAZZOLI. You are slowly but surely getting there, Dan. I am proud of you. You do not ever want to get your feet in concrete around this place. I think that is to your credit.

With your permission, Mickey, we just have a couple of quick questions and then we will get to you.

Let me just mention two things, Dan, without there being a question.

First, we think the bill is good on its face and on its own feet. But unquestionably, one of the things that is moving this bill along, one of the forces that is giving some dynamic to this, is what Father Hesburgh has many times said: Unless you close the back door, unless you gain some reasonable control over illegal entry—and we will never hermetically seal this country, nor should we—there is going to be this backlash that you talked about, this rather unfortunate feeling that we ought to then say no to everybody and close the front door.

This bill tries to close the back door in order to keep the front door open. That is really what this Nation has always stood for.

As far as the legalization program is concerned—and I recognize that the Florida delegation has spoken on it in an important way, and for the most part in a unified way—let me just ask you to take into consideration the fact that through this legalization program has been called a blanket amnesty, it is not. These people will, one by one, person by person, have to be examined. That is a long and tortuous and arduous process, and some say the INS is not equipped to do it. We will talk about that later this morning with the head of the Immigration Service. Are they equipped? Can they be? We, as a subcommittee, will probably help them to be equipped with money and people.

But it is not a blanket amnesty in this bill. It doesn't just wave a magic wand and everybody is a citizen. For one thing, nobody becomes a citizen even after they have been examined personally and individually for at least 5 years.

Second, depending on which version of which bill you want to read, newly legalized aliens have strong disabilities leveled against them from being able to take certain kinds of welfare assistance.

Furthermore, the bill, at the insistence of the California delegation and of the National Governors Association and the National Association of Counties, has a reimbursement formula in the bill for State and local governments. If we are wrong about legalization

of these people—I think are net-givers instead of net-takers—then there is a mechanism built in to allay the financial impact to the communities. The gentlemen from Florida raised directly with the Attorney General the fact that he was chagrined and dismayed that there was not enough effort being devoted by the administration to giving local jurisdictions some protection against what might occur.

I only ask you when you go to the Florida delegation, you all caucus on this issue. You have been very supportive of the bill, and we deeply appreciate it.

Thank you very much.

The gentleman from California.

Mr. LUNGREN. I will be very interested in hearing Mickey in addition to hearing Dan. I just wanted to say when I read the Bible before I always wondered what it was like to be a companion to Saul on the way to Damascus. [Laughter.]

I appreciate your movement and your thoughts.

Mr. MICA. Well, I've come a long way, as the chairman and you know. All of the informative statements and information you have given me have helped me see the light a little bit.

I would say this, that the situation with regard to reimbursement is vitally important. Even though many, in fact I think probably all, of the Florida Members of Congress were very upset about the situation and how it developed, once it developed, everyone of them jumped in and said, "All right, let's provide the necessary services and really open our hearts and community to the people who are here." We did. And we are left holding a multimillion-dollar debt.

Mr. LUNGREN. I understand that, and I think we have to make some legitimate compromise on that. One of the things we have to keep in mind, however, is on the cost side. One of the things that could torpedo any such bill is if the costs become inordinate that are attached to the bill. And you're sort of betwixt and between. Some say you've got to make sure you cover every single possible contingency, and if you err on the side of generosity of too much money, that's what you have to do. On the other hand, some forces will say, "Aha! See how much it's going to cost to legalize these people. We can't legalize them."

So we do have to tow a very, very tight line on this.

Mr. MICA. I think that's the point. I don't mean to infringe any longer on my colleagues. I'll just be brief on this. But I think that's a point I tried to reconcile in my mind when I came here and said I'd go a little farther on the legalization.

In an ideal situation, my colleagues who would say, just blanket amnesty or whatever; if they also had the clout to provide blanket funding, it certainly would change the situation quite a bit. But whichever side you're on, it is realistic to understand we are not going to be able to provide all those funds.

Now, maybe all the political winds will change and so on, but it still doesn't change the situation in our budget.

So I recognize that finances have a great deal to do with it. In my own community, as I indicated—and many in throughout south Florida—I literally leaned on local officials to open up housing, open up armories, open up facilities, and then they came back and



said, "We've done it and they won't pay us." It did create a problem.

Mr. MAZZOLI. Thank you very much.

The gentleman from Florida.

Mr. SMITH. Mr. Mica, of course you have had a tremendous impact in your district from this problem as it started and arose a couple of years ago. My district having partial sections of Dade County and Miami, I am living with this problem daily now because a lot of the refugees in fact are living in my district.

Mr. MICA. When we did the redistricting, we worked that out for you. [Laughter.]

Mr. SMITH. We are not always sure where.

But in your district—and as the chairman indicated, I took this tack with the Attorney General yesterday—not only for the budgeting they advanced to 1984 and for the block grant program, not reimbursing for block grant, which is attempting to utilize as a basis for their support of this bill, but also for what has happened in the last couple of years, to which you just alluded.

In Palm Beach you've had some major problems with reference to outbreaks of disease, hospitalization, et cetera, medical expenses among others which are not being reimbursed.

Do you have a figure to some degree in your area of what that amounts to?

Mr. MICA. I wish I did. I do not. I can only tell you the list is endless, up to and including a large number of debts, actual debts of individuals who were attempting to be smuggled in, and this is a whole different side of this issue. But it's become a very profitable business, illegal business down there, second only to illegal drugs. And when conditions aren't right to put these people ashore, in several instances they have been dumped aside and they couldn't swim, and we have had large numbers of deaths, right off the shores of Palm Beach.

Mr. SMITH. Well, we have the same problem, and that's one of the things that as a member of this committee I will be trying to fight, and that is the, I feel, ultimately inappropriate funding mechanisms which are being discussed at this moment.

Well, I'm not so sure I'm that conscious that I agree wholeheartedly, but at least we use the appropriate terminology. We ought to all at least talk the same language. Then we'll decide whether or not we're philosophically on the issue.

I have grave concerns about that and certainly would be happy, since you've come to some degree a little bit further from where you were—if that's going to happen, we are going to need tremendous cost reimbursement. And I think it's incumbent upon us in States—not only Florida; we've got Texas, California, Arizona, and a large number of other places where, frankly, they've had the problem to some degree worse than we had—and I know Mr. Leland will probably tell us this, but they've had that problem for a longer period than we have. We had it on a short, gigantic wave basis, but they have it on a daily continual basis day after day.

And these things really to some degree are hopefully going to be the unifying factors that bring a lot of people together to finally decide we are going to make some rational, final decision on this problem and jump from there into a permanent situation. Funding



is going to have to be part of that, and I'm hopeful that I can certainly count on you to be one of those fighting for it, because I intend to be, very distinctly.

Mr. MICA. Let me say, if I may, that I will submit for the record statistics statewide on the out-of-pocket costs for the State of Florida. I'll be happy to do that.

Mr. SMITH. We gave some statistics yesterday in terms of Jackson Memorial and Hollywood Memorial, and I know you have hospitals in Palm Beach as well as the local welfare agencies and so on. As I asked the Attorney General: "Even when you talk about block grants, what happens when the bucks run out and you in the local area still have the people there? What do you do about that? Close your eyes?" If you're not going to be humanitarian, then you're not going to be anything. And you can't just stop providing services when the services are required.

Mr. MICA. Dade County, Fla., was required within 1 month after Mariel to immediately build 30 elementary schools.

Mr. MAZZOLI. To the credit of the State of Florida, you have to say that the leadership from the State level down to the local level has been remarkable in the willingness of the citizens to rally together, and make the most of a tough situation. This has been notable in the history of this country. We do not think that ought to be tested day in and day out, and that we should say, "Well, they did it in the past and they can do it in the future." But I think Florida has written a pretty glorious chapter in its history, the way it reacted to it.

The gentleman from Florida, Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I think Mr. Mica from Florida has expressed pretty much the sentiments of the Florida delegation with regard to this whole problem of legalization, the cost and so forth. While I think I share the view with most of my colleagues that legalization is not appropriate and do not believe quite as much as the chairman does in the dire consequences of striking it, I think we ultimately will pass this bill this session. I am very optimistic about it, more so than last time, but we all would probably at this point live with it if we don't get the bill out, but we'd like the opportunity to get it out, and particularly live with it if we can have the kind of reimbursement.

But I'd like to ask the gentleman about one thing that very often gets shortshift, not from the chairman and not from the subcommittee, but from the public. And that is the whole area of adjudication. In Florida we have recently some statistics that haven't gotten a lot of publicity, and I don't even know if the gentleman is aware of them, but I know he's aware of the condition.

After Krome disappeared as an institution for holding folks, it turns out there were about 1,100 or so who were released from there, and of the 1,100, I was advised a week or so ago, only 66 have ever had a hearing on asylum. All of them were supposed to. And there are all kinds of reasons for that which primarily is the Federal court order on pro bono attorney work down there, but a lot of other strings and factors which I will be inquiring about later today with the INS Commissioner.

But in this bill there is a speed-up of the adjudications process which I am supportive of, but there is no provision—we were not able to get a majority last time in the committee, of either this or the whole committee—to get Federal courts out of the process, which I think the gentleman agreed with me on and cosponsored the bill that would do that, and then actually dropped his own bill in to establish an article I and gain some independence in this area.

Would the gentleman care to comment? Would he continue to support this article I?

Mr. MICA. Oh, absolutely. And let me tell you. There is total prostration on the part of the legal community in handling this in Florida, both pro and con. Those who would like to see the situation as a delaying tactic are having a heyday. The statement has been made time and time again that under the present system, it is not even reasonably possible to expect that we'd get a fraction of the number of cases handled in the lifetimes of the aliens who are here.

So without a doubt, there is no question, and I think in candid conversations those who are using it as delaying tactics will tell you that the best way to handle the situation as far as having nothing done is to keep the court system exactly the way it is. Because all we'll do is just touch a few hundred in the next few years at the present rate.

If I recall, one Federal judge was tied up on one case with a half-dozen individuals for about 18 months. And we are talking about hundreds of thousands of people.

So it is very clear that the present system is in no way handling the situation.

Now, whether you agree or disagree that people should stay or leave, I think we should all agree that we should have a legal system that can make the determinations and either have them on their way as legal citizens or on their way out because they are not here legally—one or the other. But we shouldn't just count on a system that doesn't work to see our goals reached.

Mr. McCOLLUM. Thank you for commenting on it.

I think the point he's making—and I'd like to emphasize with the chairman—is that while what we're doing in this bill is a vast improvement over the procedures used internally or externally by the processes involved, the Federal district courts are really bottling things up and will continue to do that far in excess of what the general public perhaps perceives.

Thank you very much.

Mr. MAZZOLI. I appreciate that.

Dan, thank you for your testimony.

Our next witness is our distinguished colleague from Texas, Mickey Leland. We welcome him. Congressman Leland, your statement is made a part of the record, but you may read it or proceed however you wish. Thank you for your patience.

TESTIMONY OF HON. MICKEY LELAND, REPRESENTATIVE FROM  
THE 18TH DISTRICT OF THE STATE OF TEXAS

Mr. LELAND. Thank you very much, Mr. Chairman, and your colleagues on the subcommittee for this opportunity to appear before you and renew the debate on immigration.

Above all, I would like to express my sincere appreciation to the chairman for his fair and evenhanded direction of the debate during the last session of Congress, and for his openness to the views of his opponents. I've been one of them.

Mr. MAZZOLI. Thank you very much. I would say to the gentleman that his participation in the debate was excellent. I think the gentleman and I would agree that despite the awkward hours assigned for the debate, we gave the Congress and the people who watched it a lesson in what history is really all about—the living history of people having come to this country, the various means they get here, and what they contribute when they are here.

I thank the gentleman for having participated.

Mr. LELAND. Thank you, Mr. Chairman.

I would also like to commend the chairman and the members of the subcommittee for their tireless work over several years to present the Congress with a vehicle for considering immigration reform. There can be no doubt as to the necessity of such reform. However, Mr. Chairman, as I said repeatedly in the last session, I am deeply troubled by many of the provisions of this bill.

Please understand that these objections are grounded in first-hand experience—my district, by the way, probably has more undocumented workers residing there, or as many, at least, as any district in the country—and that of my constituents, in a State as directly affected by immigration as any. My State has very serious and complicated problems of immigration of people who want to work for various and sundry reasons.

I am primarily concerned with four major provisions of this legislation: the proposed methods of controlling illegal immigration, principally employer sanctions; legalization; adjudication procedures and asylum; and foreign policy considerations.

For the sake of brevity, and because my concerns were extensively recorded in last year's debate, allow me to summarize my concerns. There are a number of related points which I would like to discuss with you at a later time.

First, I believe that employer sanctions, as a means of controlling illegal immigration, represent a real danger of deeper discrimination against those who look foreign, if you will. This concern has been eloquently and persuasively argued by a number of national Hispanic organizations.

Let me argue, too, that even the consideration of the Haitian problem is one within the realm of this same issue.

Their fear is deeply rooted in the day-to-day experiences of minorities in border States such as my State, Texas. Employer sanctions will be applied in an environment in which adequate staffing and resources for enforcement are lacking, law enforcement is very often arbitrary and abusive, and quick redress of civil rights violations is difficult to obtain.



Having grown up in the South, having grown up in Texas, having grown up in Houston, having grown up in the fifth ward in Houston, Tex., let me assure you that enforcement of the law has been a very severe and serious problem. From my perspective, being a black person, I know that very well.

As an example of the latter, I would cite a case of civil rights violations which occurred in the course of a surprise inspection in 1979. That case has only now come to trial in Lufkin, Tex. It has taken 3 years, Mr. Chairman. In such an environment, new enforcement responsibilities will most likely encourage the existing tendency to choose the path of least resistance and resort to crack-downs such as Operation Jobs, which was carried out in a blatantly discriminatory and abusive manner.

Let me say there was one radio station in Houston that during the course of Operation Jobs advertised for those people who were of Salvadoran descent to come to that radio station to get some job opportunity. And as they proceeded to get to the station, they were arrested and deported—a scurrilous way of appealing to the sensitivities of human beings. That is only one small example.

At best, employer sanctions, with provision for a secure verification system, would only work if mechanisms to prevent discrimination and guarantee quick redress are increased and strengthened. At worst, it can be credibly argued that at this point in time, employer sanctions will create problems more serious than those it is intended to address.

Second, Mr. Chairman, I commend the subcommittee's decision to include a program of legalization and amnesty—or should I just say legalization.

Mr. MAZZOLI. We are raising consciousness around this place.

Mr. LELAND. Coming from the fifth ward in Houston, Tex., my vocabulary is not that expansive and you are educating me on a daily basis.

Mr. MAZZOLI. It is as expansive as it needs to be.

Mr. SMITH. Watch out.

Mr. LELAND. Still, I must voice certain concerns. I feel that this program would be fairer and more successful if we were to shorten the required time of continuous residence in the U.S. and eliminate the second-tier temporary residence. This latter designation does not give aliens—I am very reserved about using that term. If I might educate you a minute, from my perspective, every time I think about aliens I think about “Star Wars” and so on. What was that famous movie?

Mr. SMITH. “E.T.”

Mr. LELAND. No, not “E.T.” There was one a long time ago—“War of the Worlds.” I think about aliens coming in.

This latter designation does not give those people, the people we address “the aliens,” any certainty that they will not ultimately be deported. Because of this, it is not clear that undocumented workers would choose this option over the more certain protection of anonymity.

This second-tier temporary residence is also troubling in that it would tend to create a large group of so-called aliens outside the mainstream of our society, a point made by then-Secretary of Labor, Ray Marshall, in 1977. This point is made all the more trou-

bling if we add to it the impact of denying full social benefits and assistance to the newly legalized workers and their children. Considering the economic and social contributions made by these individuals, denial of benefits strikes me as unnecessarily punitive and, in the long term, unwise.

It is also not clear, Mr. Chairman, precisely how many workers or undocumented people would either qualify for or avail themselves of the legalization provisions of earlier legislation, estimated that the response would be about 20 percent. If we are serious about resolving the problem of undocumented workers, we must be able to reach a significantly larger number.

Third, in the provisions regarding asylum and judicial review I see a more fundamental problem. The establishment of an independent U.S. Immigration Board is an important and laudable step. However, the attempt to streamline and speed up procedures by increasing the arbitrary power of immigration officials and the Attorney General, facilitating summary exclusion, curtailing judicial review, and unreasonably shortening the time period for presenting appeals, seems to me a wrong solution and a dangerous precedent. I do not think we should sacrifice basic due process and equity guaranteed by the Constitution for the sake of expediency.

Finally, Mr. Chairman, I believe that the immigration policy cannot and should not be divorced from foreign policy considerations. In practical terms, we will not resolve our immigration problems through unilateral decisions, disregarding the needs and concerns of neighbors such as Mexico. I would like to draw your attention once again to the plea of our colleagues in the Mexican Senate last December. The Mexican Senate, pointing to the repercussions within Mexico, and the effect of bilateral relations, of passage of the Simpson-Mazzoli bill, asked for extensive bilateral and multilateral consultations. It is important that we heed this plea.

The development of an immigration policy in consultation with our neighbors who will be affected by it does not constitute an abdication of our responsibility to the American people. On the contrary, it would be a necessary recognition of our complex interdependence with our neighbors and an attempt to deal with immigration problems at their root.

Mr. Chairman, I believe I have told you today those things that reflect the real concerns of my constituents in Texas and the experience of all the minorities in Texas. I am at present consulting with immigration attorneys and community organizations in my district and through Texas to receive their specific views on the immigration bill. I would like to share their views with you in the near future.

Again, I thank you for the opportunity to appear before this subcommittee, and I hope that we can reach some reasonable result.  
[The complete statement follows:]

#### REMARKS BY CONGRESSMAN MICKEY LELAND

I want to thank the chairman and the subcommittee for this opportunity to appear before you and renew the debate on immigration reform. Above all, I would like to express my sincere appreciation to the chairman for his fair and evenhanded direction of the debate during the last session of Congress, and for his openness to the views of his opponents.



It is my hope that through discussions at this early stage—today and in the coming weeks—we will be able to find common ground and resolve some of our differences. I took no pleasure from being on the opposite side from my respected friend, the chairman of the subcommittee, in the last session.

I would also like to commend the chairman and the members of the subcommittee for their tireless work over several years to present the Congress with a vehicle for considering immigration reform. There can be no doubt as to the necessity of such reform. However, as I said repeatedly in the last session, I am deeply troubled by many of the provisions of this bill. Please understand that these objections are grounded in first-hand experience—mine, and that of my constituents—in a State as directly affected by immigration as any.

I am primarily concerned with four major provisions of this legislation: The proposed methods of controlling illegal immigration, principally employer sanctions; legalization; adjudication procedures and asylum; and foreign policy considerations.

For the sake of brevity and because my concerns were extensively recorded in last year's debate, allow me to summarize my concerns. There are a number of related points which I would like to discuss with you at a later time.

First, I believe that employer sanctions, as a means of controlling illegal immigration, represent a real danger of deeper discrimination against those who look foreign, if you will. This concern has been eloquently and persuasively argued by a number of national Hispanic organizations. Their fear is deeply rooted in the day-to-day experiences of minorities in border States such as Texas. Employer sanctions will be applied in an environment in which adequate staffing and resources for enforcement are lacking, law enforcement is very often arbitrary and abusive, and quick redress of civil rights violations is difficult to obtain.

As an example of the latter, I would cite a case of civil rights violations which occurred in the course of a "surprise inspection" in 1979. That case has only now come to trial in Lufkin, Tex. It has taken 3 years. In such an environment, new enforcement responsibilities will most likely encourage the existing tendency to "choose the path of least resistance" and resort to crackdowns such as "operation jobs," which was carried out in a blatantly discriminatory and abusive manner.

At best, employer sanctions—with provisions for a "secure verification system"—would only work if mechanisms to prevent discrimination and guarantee quick redress are increased and strengthened. At worst, it can be credibly argued that at this point in time, employer sanctions will create problems more serious than those it is intended to address.

Second, I commend the subcommittee's decision to include a program of legalization and amnesty. Still, I must voice certain concerns. I feel that this program would be fairer and more successful if we were to shorten the required time of continuous residence in the United States and eliminate the section-tier "temporary residence." This latter designation does not give aliens any certainty that they will not ultimately be deported. Because of this, it is not clear that undocumented aliens would choose this option over the more certain protection of anonymity.

This second-tier temporary residence is also troubling in that it would tend to create a large group of aliens outside the mainstream of society, a point made by then-Secretary of Labor, Ray Marshall, in 1977. This point is made all the more troubling if we added to it the impact of denying full social benefits and assistance to the newly-legalized aliens and their children. Considering the economic and social contributions made by these individuals, denial of benefits strikes me as unnecessarily punitive and, in the long term, unwise.

It is also not clear precisely how many aliens would either qualify for or avail themselves of the legalization provisions. The Carter administration, in analyzing similar provisions of earlier legislation, estimated that the response would be about 20 percent. If we are serious about resolving the problem of undocumented workers, we must be able to reach a significantly larger number.

Third, in the provisions regarding asylum and judicial review, I see a more fundamental problem. The establishment of an independent U.S. Immigration Board is an important and laudable step. However, the attempt to streamline and speed up procedures by increasing the arbitrary power of immigration officials and the Attorney General, facilitating summary exclusion, curtailing judicial review, and unreasonably shortening the time period for presenting appeals, seems to me a wrong solution and a dangerous precedent. I do not think we should sacrifice basic due process and equity guaranteed by the Constitution for the sake of expediency.

Finally, Mr. Chairman, I believe that immigration policy cannot and should not be divorced from foreign policy considerations. In practical terms, we will not resolve our immigration problems through unilateral decisions, disregarding the needs and concerns of neighbors such as Mexico. I would like to draw your attention once



again to the plea of our colleagues in the Mexican Senate last December. The Mexican Senate, pointing to the repercussions within Mexico, and the effect on bilateral relations, of passage of the Simpson-Mazzoli bill, asked for extensive bilateral and multilateral consultations. It is important that we heed this plea.

The development of an immigration policy in consultation with our neighbors who will be affected by it does not constitute an abdication of our responsibility to the American people. On the contrary, it would be a necessary recognition of our complex interdependence with our neighbors and an attempt to deal with immigration problems at their root.

Mr. Chairman, I believe that what I have told you today reflects the real concerns of my constituents in Texas and the experience of minorities in Texas. I am at present consulting with immigration attorneys and community organizations in my district and throughout Texas, to receive their specific views on the immigration bill. I would like to share their views with you in the near future.

Again, I thank you for the opportunity to appear before the committee and I hope that we will be able to continue these discussions.

Mr. MAZZOLI. Well, Mr. Congressman, thank you very much for your help. You have been cogent and you have been on target on the controversial elements of our bill.

Let me yield myself 5 minutes, and then I will let my colleague from Florida, Mr. Smith, get into the question of due process. Yesterday he had a very interesting discussion with the Attorney General on administrative due process and judicial due process on the question of asylum.

I certainly want to cooperate with our neighbor to the south and our neighbor to the north and all of our neighbors in the whole hemisphere. But I really do not think we can draft a bill solely on what they think is the way we ought to go.

In our bill, at the insistence of the gentleman from California, Mr. Lungren, is a provision which sets up a commission between Mexico and the United States to discuss a lot of things—not just immigration. We have problems galore that we will be talking about for years to come. So in our bill we try to make the first tentative steps toward a consultation. But I, for one, think it would be not correct for us to consult directly with them about precisely what is in the bill. We have some idea from them in writings of Mexican scholars of what the general lay of the land is, and we certainly take those into consideration. I have met with Mexican officials in Mexico City and in Washington.

Mickey, you mentioned the 20 percent factor for legislation—and that's about what we get from other witnesses. Twenty percent might respond.

In our bill we make an effort to have a storefront outreach, as you know. We try to get to the people who would qualify for the program. We also put an insulator, a kind of intervening element, between the individuals and the INS by having these voluntary agencies—church groups, ethnic groups—make the first contact with the people so that the people would feel they were not vulnerable. They can come in and talk to a person who is not going to bust them if their papers are not in order.

So we are hoping to build that 20 percent up.

I said yesterday at the hearing that the GAO reports that Canada had about a 20 or 30 percent response; France has had a fairly low response to its amnesties and legalization programs in the past. So it is hard to say just how far we can build that number up.

You make mention that certain activities in the enforcement area have been less than sensitive and sometimes have been found by the courts to have been overreaching and legally sanctionable.

The question I would ask is: If we do not pass a bill that has component parts which tend to solve the problem, aren't we simply condemning to the future what we have today, which is periodic enforcements, kind of a cyclical flow of this activity? Would not what we suggest here be attractive because it might finesse some of the very same problems that you legitimately point out in your statement?

Mr. LELAND. Mr. Chairman, let me respond by saying that I am fearful that if we provide more sanctions in that way, indeed what we are going to find is a multiple response, that we realize in Texas in particular, where we find that law enforcement officers are terribly abusive, particularly those who have not dealt with this problem on a daily basis.

And so I am very fearful about the violation of human rights and human dignity, for that matter, by those law enforcement agents who would be given authority to go forward to execute what it is that you desire.

Mr. MAZZOLI. Thank you. I appreciate that. Thank you for taking the time to join us.

Mr. LELAND. Mr. Chairman, if I might, I'd like to also respond on another point you raised.

Mr. MAZZOLI. Certainly.

Mr. LELAND. It had to do with dealing with our neighbors to the south of us in Mexico, and other neighbors, for that matter, who would be affected by what we do.

Let me beg to differ with you on the issue of how we relate or communicate with them.

I think when we raise a question as serious as the immigration policy that we raise today, the serious foreign policy implications that I see raised here are terribly, terribly important to not only us but also to our neighbors. And if, in fact, we were to pass an immigration policy without true consultation, without bilateral consideration—and not necessarily having them dictate to us what it is that we should pass as a nation, but rather considering their attitudes and the issues that they see raised by the passage of this kind of legislation, it seems to me we ought to engage in a very serious discussion on these matters.

And while I again feel very strongly that indeed we need to develop policy ourselves that relate to us, this is a very small world today. And Mexico being our neighbor has been juxtaposed to us for various and sundry reasons, and God knows that a lot of those reasons were because of the prejudices that we held as a nation toward them for as long as we have been in existence.

I think that today we are at a very sensitive time in developing a friendly relationship with Mexico and other nations with which we have similar problems. And we ought to consider whether or not we are going to further damage any opportunity for us to reach out to our neighbors and say, "We want to work with you." And that is the concern I raised about foreign policy implications.

Mr. MAZZOLI. Thank you very much, Mickey. Certainly it is not out of our thinking for 1 second. The question is just how to go

about doing it since we are a sovereign nation and we have to make judgments about what is best for the United States. Nevertheless, when you have a neighbor as big as Mexico nearby with its problems, we certainly cannot ignore them.

The gentleman from Texas.

Mr. HALL. I have no questions.

Mr. MAZZOLI. The gentleman from Florida, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Leland, first of all let me commend you for picking out those areas that are obviously of major concern to most people and highlighting and focusing on those.

I'd also commend you for your relation of the foreign policy issue to the whole question because there is no doubt that this is one of the overriding issues creating this whole problem. Foreign policy in terms of our economic policies in South America, for instance—Latin America, South America, the Caribbean—have created a migration over the years in Mexico, created these migrations to the United States. We really have to look at those in terms of a coordinated effort to finally get some handle on all of this.

Because no matter what we put on the printed page, until we solve the root cause of the problem, all we are doing is really, after the horse is out, trying to lock the barn door. We are never getting to the point of trying to keep the horse in the barn to begin with by making it more attractive for people because there are opportunities in their own home country to earn what they can earn in the United States.

The problem, however, relates to some of the issues as to what we need to do at least as a first step here because the Judiciary Committee doesn't have foreign affairs jurisdiction, although I sit on Foreign Affairs and it's almost as difficult up there to believe we have foreign affairs jurisdiction.

On the question of sanctions—and I share your concerns about those. Even before I was elected I came in thinking that there were some major problems with the area of sanctions. But just on a hypothetical basis, suppose there were the dollars and the enforcement mode—setting aside local law enforcement for the time being—if they were provided and they weren't lacking, do you feel that sanctions would then be appropriate, that you could do a good job of what you intend to do with sanctions, and that is really deter rather than punish employers?

Mr. LELAND. I don't think so.

Mr. SMITH. What would you suggest instead?

Mr. LELAND. I'm not really sure, Mr. Smith. I wish I had the answer to that. And that is why it's hard to argue against the policy that's being involved when in fact you don't have an alternative. I just feel in the whole area of providing some kind of deterrence for undocumented coming across the border, we need to do something. It's esoteric to a lot of people but it's clear and simple in my mind. And that is we need to develop better relationships with those countries, provide resources to help them to industrialize, to help them to provide better job opportunities for their people, the people who would come here for those very things.

That to me is the real answer, as opposed to providing for these so-called stopgap measures.



I realize something has to be done, and I know that the people here, particularly on this committee, are very sincere about developing an instrument by which we can resolve the problem that afflicts our country so much. But at the same time, I think if we, as I do, regard the human rights of people, regardless of what country they come from, we must go beyond ourselves, our own reach, in order that we resolve these problems.

We think of undocumented problems as being—you have been more involved in this, but most people think in this country that we're talking about people who come from Mexico.

Look at Haiti. There is a terribly oppressive regime that runs that country. People take all kinds of precarious steps to get from Haiti to this country, to eke out a living for their families, to seek refuge, to save their lives in many, many instances, and from incarceration.

I think in terms of the leverage we have on Haiti—for instance, if we were to make a foreign policy consideration, we would use our leverage with Haiti, maybe Dr. Duvalier, to do what we can to assure that that at least that country—not to dictate to them what they ought to be doing, but at least to use the power of sanctions against the country, as we do in Cuba and as we do in other parts of the world for that matter, in order that we can help them, not only in terms of them imposing human rights standards in that country, but also to provide resources for them to develop job opportunities for the people so they can work and develop a comfortable living for themselves, their families, and everything else.

MR. SMITH. I couldn't agree with you more, because I feel exactly the same way as you on that point.

But let me take the converse and take the side that you are now arguing and see if I can't throw it back the other way.

With reference to, rather than legalization with the tiered structure that is in the bill before us, advancing the date like you want to do or removing the two dates, don't you think that's going to have the converse effect by in fact promoting more people to come here, seeing if they can struggle in under that advancing date, and not have a two-tiered system, rather than promoting them to stay in their own country even if we were going to make some of the civil rights, human rights, and economic advances in those foreign countries?

MR. LELAND. I realize how very sophisticated we are today, but think about it: that two-tiered system was in existence, in fact, when the Europeans came over here and established themselves as citizens, imposed themselves on organized society, called the Native American tribunals or whatever. But I am concerned about how it is that we further defer opportunities for people to be legalized, so to speak, and to come to this country. Sure, it will. It will send a signal that in fact more people are to come here. But at the same time, we have certain controls that would disallow that.

I suggest that the people who come here illegally today, considering the conditions that exist today—are not going to stop coming whether we establish this law or not. The fact is that there are illegal aliens or illegal workers who come here seeking refuge from problems that run rampant throughout their countries for what-

ever reason, and this land has promoted the fact that we are the best and the strongest and we have the most to offer.

Thus, for as long as this country is as strong and powerful and affluent as it is, in spite of the problems that we have, people are going to want to come to America. And I would hope that is the case whether we pass a bill or not.

Mr. MAZZOLI. The gentleman's time is up.

Mr. SMITH. Thank you.

Mr. MAZZOLI. The gentleman from Florida is recognized for 5 minutes.

Mr. McCOLLUM. Thank you.

I think the experience of the gentleman from Texas in describing the situation from his perspective is very good for this subcommittee to hear. I am curious if the gentleman has any suggestions about the mechanisms to prevent discrimination in the employer sanction area which we might benefit from. I know you alluded to that in your statement. The specific language I'm quoting back to you. But I am very interested in preventing any possibility of that, and whether you have them today or down the road, I would hope that you'd submit them to the subcommittee.

Mr. LELAND. I certainly will, and I will engage in conversations, as I have in the past, with employers of undocumented workers. And I have talked to many of them. I have many of them in my district. There's big employers and small employers of those people.

One of the problems with these kinds of sanctions is, of course, the inherent prejudices that people hold against foreigners.

In Texas we have a problem with particularly Mexican people who come as undocumented workers, and the police departments, the policemen, are the ones who tend to abuse—not all of them, many do a great job. But many of these people are inherently for some reason prejudiced against people who are foreigners in my district in particular. Let me speak to my district in particular.

A lot of policemen, let me say, in recent years, have learned to lock out their prejudices when they go to serve notice on people for illegal actions one way or another—blacks, whites, Hispanics, or otherwise—thus realizing their professional responsibility was a lot more important to them than was their personal considerations. And I applaud them.

But the problem is that there are so many people who are left in this world who are prejudiced against people who are not like them. They tend to continue those prejudices. And all I'm saying is that to provide this kind of sanction provides even further discrimination. We have not solved the problem of discrimination against Mexican Americans, blacks, and other minorities in this country.

Mr. McCOLLUM. Would you prefer if we did some enhancement of the enforcement policies, something that is not currently in this bill but that might be considered separately or as an amendment to it, that we use expansion of the current immigration officers, rather than somehow delegating powers to local police officers? Would you feel the expansion of the immigration officers would be better?

Mr. LELAND. I would think very much so. That would limit the problem. I'd have to analyze it a lot more deeply than I can at this moment, of course. But very definitely I would very much like the



committee, and you for that matter, to seek that enhancement. Because I think the immigration officers, who have been so accustomed to dealing with the problem, are more sensitive than are the local police authorities in my district and in other districts throughout the country.

Mr. McCOLLUM. I gather, though, that as of today you do not have specifics for us with regard to employer sanction mechanisms.

Mr. LELAND. That's right. At this point, given not the alternative, my response is that we ought not to do it.

Mr. MAZZOLI. If I could interrupt for a moment, let me ask this: Mickey, it's true that people say, "I don't like the legalization section; let's get rid of that. Let's get rid of employer sanctions. Let's get rid of this and that." And, of course, you reach the point of not having a bill left. And if you have no bill left, get no bill, then what you have is a continuation of today's situation, which from what I understand, after studying the thing for 2 years, is exploitation, it's abuse of people, it's denial of due process to people, it's a failure to correct some of the most outrageous behavior of people toward people. That's what we have today.

This bill has symmetry and balance. It's been studied by four administrations. It's been passed on by the Hesburgh Commission. All these people, people smarter than Ron Mazzoli, say, "Look, this will make it better."

Why don't we take a chance to make something better than condemning the hundreds of thousand of people in Houston, Tex. Kentucky, New York, and the country to the fate that they have today?

Mr. LELAND. Well, Mr. Chairman, I have never at any time questioned the motives of the gentleman nor the people who have made this a consideration for the time that you have indicated. My problem is that there are certain problems inherent in the bill that are going to become more pronounced in the State of Texas where I come from, and I'm sure in California, and other places where the problem is rampant. And I have pointed out the areas of my concern.

I recognize the process is very important, the process of your consideration, the process of the consideration of the objective analysis of members of Congress and how they vote on this matter.

Indeed, our debate, if you have it, is very good, and hopefully something will come out of this Congress that is refined enough that will appeal to the sensitivities that I have raised and also the concerns that you have raised.

I realize and acknowledge that we need something done. It is just that some of those things that you want to do I don't want you to do.

Mr. MAZZOLI. Thank you. I appreciate it. If you have your way, we won't do it.

The gentleman from California was detained for a moment. The gentleman is recognized for 5 minutes.

Mr. LUNGREN. I'm sorry I wasn't here to hear your testimony but I have gone through most of it.

One of the questions I have is that one of our witnesses yesterday suggested that if it could possibly be done, the best thing we could do, because of the disparity of economic circumstances that



exist between ourselves and Mexico, and because we have an historical relationship between that country and ourselves, would be to have an open border type of situation.

Would you support moving in that direction? Would you think that would be at all practical?

Mr. LELAND. Well, that's a bit much. I'm not opposed to it.

Mr. LUNGREN. I'm trying to get your thinking.

Mr. LELAND. I don't feel strongly about it because I realize there has to be some control between the borders. But I would suggest that that might be the answer.

However, let me suggest—well, it's political suicide for me to say that. [Laughter.]

Mr. LUNGREN. I'm not asking you to commit hari-kari.

Mr. LELAND. But I have done it so many times. [Laughter.]

Mr. LUNGREN. We could keep it a secret. [Laughter.]

Mr. MAZZOLI. We could make it off the record.

Mr. LELAND. The situation between Mexico and the United States is a unique situation, as you know, because you're from California. You know as well as I do that something needs to be done bilaterally between our countries. Maybe it's not the immigration bill that will address this problem, but I still raise concerns about the foreign policy implications. I think we need to work very closely with the Mexican Government to try to determine exactly how it is that we can relate to one another. I am not opposed to open borders between Mexico and Texas.

Mr. LUNGREN. One of the things I tried to get in the bill was a cooperative effort for consultation between ourselves and Mexico. Because of the problem of this thing going off to other committees before it ever gets to the floor we have a rather limited version in the bill.

Mr. LELAND. I like the provision. It was explained to me by the chairman, by the way.

Mr. LUNGREN. Thank you. It would be my hope that on the floor we could expand it to have even more serious consultation required between ourselves and Mexico in all of our relations as it applies to immigration, not just an H-2 program or anything else, but in all our relations with that country. Because when you think about the bracero program, there are a lot of obvious problems with it, but the point is we started it without consulting Mexico and we ended it without consulting Mexico, and there is no reason to wonder why they think perhaps we don't view them as partners in all of this.

I know you spoke about this a little earlier before I was here, but I'd like to get your thinking on it. In terms of employer sanctions—and it sort of rolls into a question that was asked you about the legalization. I acknowledge that we are never going to totally control our borders. I happen to think we can put some leverage on it, we can have some control.

And it seems to many of us that one of the keys is demagnetizing the migration. That is, the greatest attraction is jobs. As long as the United States has its position of economic strength—and we still have that, despite all the problems we have now vis-a-vis the rest of the world—people are going to be drawn here.

So that being the case, it seemed to us that if we were to have some control over it, we had to do something about the nexus be-

tween job opportunity and someone seeking that job. And that is where we came up with the employer sanctions.

Now, if you could accept this hypothetical, that employer sanctions should be part of a total package, do you envision some specifics about how we could change the employer sanction provisions that we have to eliminate the possibilities of discrimination?

Because one of the reasons we required everybody to present their credentials, so to speak, to the employer, was to get away from the discriminatory aspect. If we only said they had to get that from those people who they assumed to be or were questionably here illegally, obviously they are going to pick out those groups that they think have the greatest number of undocumented aliens, the Hispanic groups in my area. So that could lead to discrimination. So we wanted to get away from that. And that's why we required everyone to produce those documents.

In that context, are there some specific suggestions of how we might alter what we have presented?

Mr. LELAND. No. As I explained before, it is just the problem of inherent discrimination. People are people. Maybe I shouldn't say it—quiet discrimination. From history, we know people love their own kind and they tend to discriminate against or they at least hold prejudiced views against people who are of different colors, cultures, et cetera. And until we can solve that problem, I don't think you can really solve the problem except in the area of professionalism, as in the police area. I think the people to whom we give the authority to serve these sanctions have to hold above them their professional responsibility as opposed to their personal feelings in many instances.

One isolated example is the Mexican-American citizen who can't speak English who goes to seek employment, and he is considered as a person of very few needs and is not so knowledgeable about the system that he has grown up in. He goes to an employer and asks for a job, and the employer says, "I can't give you a job because you don't have documentation that you are an American citizen."

The person then is turned away, and I'm afraid the reason the person is turned away is because the employer says, "I am not going to get into trouble by hiring an undocumented worker. This guy might be an American citizen but I'm not going to give him a job because he might not be."

So I am concerned about that kind of thing, too. But I don't have the answers.

Mr. MAZZOLI. The gentleman's time has expired.

Thank you very much, Congressman, for your testimony. As you said earlier in your statement, you will be consulting with your people back home and some of the experts. I'd be delighted to receive whatever information you can develop.

Mr. LELAND. Mr. Chairman, if I may, I'd like to make one last statement. I'd like to say in my district—and this is for the record—while I hold these views to be my views, there are many blacks and Hispanics in my district who feel as strongly about the passage of your legislation as you do.

Mr. MAZZOLI. Thank you. I appreciate your saying that because, frankly, we have received quite a lot of letters from people who feel

threatened. And maybe they incorrectly perceive the situation, but they feel very strongly. And there is a division.

But we thank you very much, Mickey, and we appreciate your time.

Mr. LELAND. Thank you.

Mr. MAZZOLI. The gentleman from Nebraska, our next witness, Congressman Hal Daub.

Hal, thank you for coming. And your statement which we received in a timely fashion is made a part of the record. You may read it, speak from it, whatever is your pleasure.

#### TESTIMONY OF HON. HAL DAUB, REPRESENTATIVE FROM THE SECOND DISTRICT OF THE STATE OF NEBRASKA

Mr. DAUB. Thank you very much. It is a privilege to be here, and I want to state I enjoyed very much just being here this morning and listening to the very deep dialog with this committee about a very special subject.

Having been an immigration lawyer and having practiced law in this field extensively, I am pleased to talk with you a little bit about several things. I think I will use my statement as a reference point and it won't take very long.

I do appreciate the opportunity to appear. The subcommittee has done a lot of good work already, and I want to share with you my concern over a matter that indeed has a profound impact on our country and all Americans.

Thanking you, first of all, Mr. Chairman, for the months and years that you have labored to achieve a meaningful immigration reform, you are to be commended. I think we need a bill, and I think we are headed in the right direction. Your efforts are providing this leadership, and certainly all who are interested in it should appreciate the opportunity that you are giving us for careful consideration and debate over the provisions that are now contained in the reintroduced Immigration Reform and Control Act.

Immigration, both legal and illegal, has profound economic and social repercussions on our society. The importance of thorough consideration of these effects cannot be overstated.

Estimates on the number of undocumented aliens currently residing in this country vary widely. The administration has estimated that the number can be between 3 and 6 million, although many believe that number could be as high as 10 to 12 million.

Taking a conservative figure of 4.5 million undocumented aliens residing in the United States, the Department of Health and Human Services estimated in December 1982 that 45 percent of illegals—or roughly 2,025,000 aliens—presently in this country entered before the year 1980.

Under the provisions of H.R. 1510, eventual permanent resident status could be granted to these undocumented aliens. Those entering before January 1, 1977, could apply for permanent residence immediately, with those entering January 1, 1980, being eligible for a temporary resident status, yet eligible for permanent status after 3 years.

Of the 2,025,000 undocumented aliens who would be eligible for amnesty, 30 percent, or 1,350,000 of these individuals, would be eli-



gible for temporary residence, with the balance of 15 percent, or 675,000 aliens, eligible for permanent resident status.

Of this 2,025,000 undocumented aliens who would qualify under the amnesty program—Mr. Chairman, I would indicate here parenthetically that when I grew up as a boy, pot was a place you sat and grass was something you cut. And I appreciate the elevation of awareness, the stimulation of use of words, so I will use the word “amnesty” only sparingly, with the meaning it was originally intended to demonstrate.

Mr. MAZZOLI. Thank you very much. You have always impressed me as a quick study. [Laughter.]

Mr. DAUB. Well, the half-hour I spent in the chair over here was very instructive.

The Department of Health and Human Services further estimated that approximately 60 percent of these aliens—that’s a figure of 1,215,000—would eventually participate in the legalization program. I changed the word. Let the record show that.

The Congressional Budget Office estimated that initial dependence of amnestied aliens upon public assistance programs would be low. However, they expect this rate to build over a 4-year period to match the rate of the present American population. Using an effective date of October 1, 1983, CBO estimated that Federal public assistance costs could be expected to equal annually \$1.191 billion. By 1989 this cost is predicted to rise to \$1.895 billion for that year. So it’s almost \$2 billion.

Mr. Chairman, today the Federal Government is suffering from an overwhelming deficit, the States are being forced to make up for reductions in funding for many public assistance programs, and this legislation could be the straw, without the proper, as I heard in earlier testimony, contributions or provisions that would break the State’s back, the camel’s back.

In response to this concern, I was pleased to note that H.R. 1510 included, under the section marked 302, the provision to update the registry date of current law from June 30, 1948, to January 1, 1973.

This provision encompasses a measure which I introduced during the last session of Congress, and I believe that a registry date of January 1, 1973, will allow Members of the House an opportunity for compromise which, if retained, would provide a more realistic reform of immigration law, in lieu of the legalization provisions in the proposal now before us.

In addition to my concerns with illegal immigration, I have concerns over legal immigration. The fifth preference category for legal immigrants has broad implications for our country, particularly when coupled with the possibility of amnesty for illegal aliens.

In 1979, 92,227 immigrants were admitted under the fifth preference category, a category which includes brothers and sisters of permanent residents, as well as their spouses and children. This number represented over one-third of all immigrants admitted during that year, 1979, under our system of preferences for relatives of permanent residents, according to the Department of Justice’s 1979 Statistical Yearbook.

To demonstrate the economic impact of immigration, let me refer to a study presented by Mr. David Heer at the annual meeting of the Population Association of America on April 29 to May 1, 1982.

Mr. Heer's survey included unmarried mothers of Mexican origin with one or more United States-born children, age 2 or over, who had resided in the United States for 12 months during the year 1979, and received aid to families with dependent children.

This study found that 18.36 percent of illegal alien mothers received AFDC benefits, while 21.87 percent of legal alien mothers in the study received benefits. Of American-born mothers in the study, approximately 18.47 percent received benefits.

The study suggested that the rate of dependence upon public assistance for legal-immigrant mothers was slightly higher than the rate of dependence for United States-born single mothers.

Even if these rates reflect little difference, the figures should indicate to us that our public assistance costs will increase in proportion to the increase in our legal-resident alien population.

Combining the costs for public assistance to legal immigrants with the costs of public assistance to aliens granted permanent residence is potentially staggering.

Mr. Chairman, my experiences with immigration law in Omaha, Neb., together with the substantial input I have received from my constituents, lead me to believe that the issue of immigration reform must be thoroughly debated. I remain convinced that a great many Americans, particularly at this critical time in our Nation's history, have grave reservations over liberalizing our immigration laws in the manner proposed by H.R. 1510.

Finally, Mr. Chairman, I look forward to working with you in the coming months to achieve meaningful yet realistic immigration reform.

Thank you very much.

[The complete statement follows:]

TESTIMONY OF CONGRESSMAN HAL DAUB BEFORE JUDICIARY SUBCOMMITTEE ON  
IMMIGRATION

Mr. Chairman, members of the Subcommittee, I certainly appreciate being given this opportunity to appear before your subcommittee to share with you my concern over a matter which could have a profound impact upon all Americans.

First let me say, Mr. Chairman, that the many months and years you have labored to achieve meaningful immigration reform are to be commended, as are your efforts to provide all those interested with the opportunity to carefully consider and debate the provisions included in the Immigration Reform and Control Act.

Immigration, both legal and illegal, has profound economic and social repercussions on our society. The importance of thorough consideration of these effects cannot be overstated.

Estimates on the number of undocumented aliens currently residing in this country vary widely: the Administration has estimated that number to be between 3 and 6 million, although many believe that number to be as high as 10 to 12 million.

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Finally, Mr. Chairman, I look forward to working with you in the coming months to achieve meaningful, yet realistic immigration reform.

Thank you.

Mr. MAZZOLI. Hal, thank you very much. Let me yield myself 5 minutes to begin some questions.

Mr. DAUB. Yes.

Mr. MAZZOLI. You mentioned that the registry date approach is preferable, in your judgment, as an immigration lawyer, as you studied the problem, than trying to do something through legalization.



Let me ask you: One of the problems with legalization, whatever date you pick, whatever form—two-track, three-track—is the fact that whenever you make these people legal, you legalize and correct their status, you then give them the opportunity to participate like resident aliens or U.S. citizens in the welfare system. That became such a constant battle to us, because the original draft of Simpson-Mazzoli had no disability to speak of for those who had been here before the earlier date.

Mr. DAUB. Yes; I recall.

Mr. MAZZOLI. They would be the same as any resident coming from any part of the world through the legal immigration program.

Our experience and what testimony we had said.

These people are workers. They came here to work. They are not net-takers but probably net-givers. The experience ought not be too perilous, so let's take those earlier-date people and they will take what they are entitled to take.

But that was such a bugaboo for some of our friends that we then put in, as you know, certain disabilities, certain restrictions on what some of these newly legalized people could obtain, including those from the earlier date as well.

The question I would ask is this: If our critics are correct that those who would be 7 years or more, when they are legalized would have their hand out palm up—if that criticism is correct. What would keep your 10-year period people—because your registry date is a 10-year period—from having the very same effect. And, as I understand it, these people, under the 10-year registry, would not be barred from taking any benefits. They would be entitled to them as any permanent resident. We think it's constitutional to limit the access of newly legalized people under this formula for legalization to the welfare system. You do not for those under the registry.

So I wonder: Are we not simply continuing the same problem if our critics are correct at all?

Mr. DAUB. Well, I understand that. And the question, I guess, becomes the tradeoff, as I suggested the idea of compromise. Again, I hope you recognize that I am very concerned about providing a mechanism for legalization. I think that's important. I'm not saying that the old way of doing it is perfect, but I do believe that with a separate court system or a provision for fast-tracking, the consideration of documentation, the coming forth of 20 percent or 30 percent or 70 percent of the people you'd like to have in that 7-year period or 10-year period may be still a very difficult nut to crack.

I just believe that the case-by-case approach sends a message to people who indeed come to this country and their status is illegal to begin with, that it is not going to be easy, as history will show, for you to become a permanent resident, which leads to citizenship, which then leads to the use of fifth preference, which over a period of 30 or 40 years can add as many as 60 to 70 million people under the current attractiveness of knowing that, in fact, blanket legalization would occur.

And I think the costs are enormous under any circumstances, so I'm not sure the critics are right or wrong as they look at a 7-year

period or a 10-year period. I'm willing to accept the fact that the money costs are still going to be there, Mr. Chairman.

Mr. MAZZOLI. Well, in the form of our bill, whatever costs occur to the States is picked up by the Federal Government.

Mr. DAUB. Yes, I understand.

Mr. MAZZOLI. It would not be true under the registry. That would be State responsibility 100 percent. So if the people are going to be takers, then in the case of the registry date they are taking it right from the States. In our formula, the States get reimbursed from the Federal Government.

But let me make sure the record is clear. We certainly do not propose a blanket amnesty. That is the difference between that term which is used to describe our bill and legalization. This legalization program we have here is a case-by-case approach. Every person will be examined. There are verifications necessary, including proof of how long applicants been in the country.

I might say, as I offered to do for one of the earlier witnesses, I would like to send you the material which the Immigration Service has prepared as they have been looking at this problem for the last 6 or 7 months, anticipating the passage of our bill. They have been working on a task force. And the way they outline it, it is not going to be easy for someone to just proffer themselves and say, "Look, make me a citizen." It isn't going to be that easy.

I just want to be sure the record is clear that we do not have a blanket approach where everybody is just routinely welcomed. Everybody will be examined and will have to be screened. To that extent, it does become a kind of registry activity.

Mr. DAUB. That's my point. Isn't the point, Mr. Chairman, that in fact if it's 1977 and 1980, as a rule, there isn't any doubt about the fact they have had to be here in any way, shape, or form? Someone can just prove that they have been here prior to that time?

Mr. MAZZOLI. They have to prove it, and of course they have to prove it with the material that the Immigration Service, from guidelines later to be published, would find persuasive.

So if a person comes in and says, "Look, I don't have any proof but I've been here for 7 years," that person is not going to be qualified to come in. The fact that they are physically in the United States when this bill goes into effect does not guarantee that they are going to qualify. They have to show that they came before the cutoff date.

We do not have a blanket amnesty. We have a legalization program.

Mr. DAUB. Do you propose to perfect that by the intent of the discussion or in the specific language of the bill itself?

Mr. MAZZOLI. That is in our bill now. We also have a registry date in our bill because that was added at the full committee.

Mr. DAUB. Right; I understand that.

Mr. MAZZOLI. But I do not think they are mutually exclusive.

Mr. DAUB. Do you want to try to utilize that to mean something to Immigration as they formulate—

Mr. MAZZOLI. I yield to fellows like yourself who practice immigration. You said the old registry date was out of whack, so I accept the fact that 1973 may be the more realistic date. But I do

not think just doing that solves the States' problems because, if that were the only thing we did in a program here for legalization, those people who came in before 10 years would be total State responsibilities. There would be no Federal bailout, if you will, for their welfare costs.

And if you believe the critics, who I think are wrong, that the people will say, "Look, you tell me what date to be here, I'll find the papers for that date," they might as well say they've been 10 years as 7 years. But in the latter case, those people coming in under legalization, their welfare costs, whatever they are—and I dispute strongly what the States seem to say here—those would be a matter of Federal-State cooperation.

Mr. DAUB. I do believe we have to place some responsibility on the States to assist in the regulated activity that would be required by this kind of legislation. And if we just make it possible for all of their bills to be paid, then I think we could be in for some of the exaggerated criticism that is being aimed at us now.

Mr. MAZZOLI. The gentleman from Texas is recognized for 5 minutes.

Mr. HALL. Hal, I've read your statement and I've listened to your testimony, but I don't know what the bottom line to it is. You stated at the outset that you wanted a bill. On page 3 you say, "The Federal Government is suffering from an overwhelming deficit, the States are being forced to make up for reductions," and then, "This legislation could be the straw that breaks the camel's back."

I don't understand that statement. Would you explain it to me?

Mr. DAUB. Surely. Congressman Leland talked about it a little bit before. If you are concerned about the slant of one's eye, the color of one's skin, or the sound of their voice, and if indeed we look at the relationships that amnesty brings—I use that term because I feel that the intent of the legislation, at least the Senate language that I am looking at as it may be dovetailed with the conference committee report and then this legislation, gives indeed what I consider to be blanket amnesty.

Now, I understand the distinction the chairman made, but that is my interpretation of the way in which the legislation is headed. And it is for that reason that I would prefer us to take the approach of the use in a single fashion of a registry date, and not allow all of those who come automatically before a certain date, who can in some way verify or document that, to be granted permanent residence.

If we do that, I think we are opening the gate to making it very attractive to expect that in 10 more years we will do the same thing.

Mr. HALL. I don't think there's any question about that if this bill passed in its present form. We are not going to stop people from coming to this country, and we will probably have to do this again 10 years from now, maybe in a lesser time.

Are you in favor of the advancement of this registry date of January 1, 1973, a change?

Mr. DAUB. I'm in favor of it being changed from where it is in the present law to 1973. It's 1948 now.

Mr. HALL. 1948 to 1973. Are you in favor of that?



Mr. DAUB. Correct.

Mr. HALL. Well, are you saying that the fifth preference, as now in use, should be changed?

Mr. DAUB. Correct me if I'm wrong. The Senate version of the bill on fifth preference is eliminated.

Mr. HALL. In the Senate version, the fifth preference is eliminated, yes. In the House version we are silent. We do not change anything at this point.

Mr. DAUB. Right. So my point is that coupling what I call almost a universal legalization, that leads to the use of the fifth preference in a way which the multiplier effect of that brings in many, many more people than I think we are anticipating in the numbers.

Mr. HALL. If you don't have a fifth preference, is it not a fact that if an individual comes in without a fifth preference, he or she may not be able to bring in their spouses or their children?

Mr. DAUB. Well, I'm not sure what the House version of the bill is trying to say. It remains silent on that issue, Mr. Hall, so I think that needs to be clarified.

Mr. MAZZOLI. In the full committee markup, the full committee in its wisdom struck the entire legal immigration section which we had written into our bill at the subcommittee level, which was somewhat a change from the Senate version. The then-House version said that the fifth preference would be restored to the extent of unmarried brothers and sisters.

Mr. DAUB. Limited to that.

Mr. MAZZOLI. Limited to that. We also made the change in the second preference. But as to the fifth, the version that went to the full Judiciary Committee restored the fifth preference, but in effect limited it from current law—limited it to unmarried brothers and sisters. But then the entire section was struck by the full committee.

Mr. DAUB. I think that's my point, that I don't know where you may be headed on that issue. I'm raising the point that if you have almost a pure legalization up to 1977, and then use what is normally the 5 years of permanent residence that results in citizenship—going from the legalization window to the naturalization window—you then, without some other limitation on fifth preference—and I think again, even limiting it to the unmarried brother and sister is a step in the right direction—change the numbers in terms of what the public assistance provisions of this law might be 2, 3, 5, 8, 9, 10 years from now.

And I think that is what my concern is. I want to be sure there is a broader view of legalization than just the numbers that we are talking about now; that it is the use of fifth preference in the old way, the way the law now reads, that could add giant numbers of people to the systems for which the States are now struggling to pay.

Mr. HALL. But from a practical standpoint, would it be fair to eliminate a fifth preference and say to a man whom you have granted some sort of amnesty that, "You cannot bring your spouse, you cannot bring your children, and you cannot bring over here your unmarried brothers and sisters."

Mr. DAUB. I understand the problem, and I know how sensitive it is, so I will state my feelings on the matter.

As a lawyer, I have watched the use of the system, and I would say to you that it is an attractive proposition to navigate your way into the system now as an illegal alien, because you are very well aware of the fact that if, in some way, shape, or form, there is blanket amnesty, then the possibility of bringing your wife and your children and others here exists. In other words, the risks right now are worth it.

And I don't want to say I am not compassionate under a registry date for those who have been here 10 years and developed family networks and family relationships, and I am willing to consider the grandfathering of that kind of a family relationship. But to say to that new person who might come in, "You can bring Mom and Dad and you can bring your wife or your husband and your brothers and sisters," and all of those married relationships that flow from what I have just said adds numbers to the system to which I don't think we really are paying enough attention.

Mr. HALL. Thank you, Hal.

Mr. MAZZOLI. The gentleman's time is up. Thank you.

The gentleman from California, our ranking member, is recognized for 5 minutes.

Mr. LUNGREN. Thank you, Mr. Chairman.

Hal, I think since you recognize that we have this problem in immigration, we have got to do something about it, and Congress will so rarely do something significant about this subject, is it reasonable either through a registry date or legalization program to cut it off at 1973? What do we do with those who came in since that time and have ties in the community and so forth?

Mr. DAUB. I think we have to appreciate that we have to decide just how tough we are going to be on this issue. And we can decide that every 2 or 3 or 4 years we are going to say, "All those who have come in now are documentable and are now legal and are now permanent," and we can sweep it aside. But the population impact of that is staggering when, in fact, the public assistance costs that we then presume to pick up in that legalization I think offend the sense of those who have worked and have come here legally through the quota systems and who in fact have sponsors and those bills are paid for them.

I think that's my point. We certainly do have to do what we feel will improve the circumstances over the way things are handled now, but I really believe that a fuller sense of legalization brings with it problems that offend even those who stand in line for 8 and 10 and 20 years elsewhere in this world to come here legally. And I think we have to be careful about that.

Mr. LUNGREN. I understand that, and I think you are properly correct on that. My question still is: What do you do with those who have come here since January 1, 1973, up to the present time?

Mr. DAUB. They're illegal. They should be handled in the same way that we presume the law would now if found and discovered.

Mr. LUNGREN. But the law doesn't find and discover them now.

Mr. DAUB. I appreciate that problem.

Mr. LUNGREN. So what do we do?

Mr. DAUB. I'm not sure we're ignoring that. That is an enforcement matter I think the Judiciary Committee and the Justice Department need to address. I appreciate that problem is there. The

registry date move and the acceleration as this bill suggests—there are many other ways of care for those people—solves a large part of the problem as we have defined it up to this point. It takes care of a couple million people, Congressman.

Mr. LUNGREN. Let me put it in this perspective. I think a lot of people recognize, as we all do, we haven't had an enforcement of current law, perhaps because we are never given the resources. And now the system is out of hand. And no matter how many resources you give, unless you want to go, as I said before, to neighborhood sweeps, not only in the barrio but in Beverly Hills, Santa Ana, Long Beach—

Mr. DAUB. And Omaha, Nebraska. I understand.

Mr. LUNGREN [continuing]. And knock on doors and find out who is working in the family estate there. Are we going to deport these people?

But I do think that if we take care of the situation now somehow—you know, in a reasonable way—and recognize we have not enforced the law, and we have an insuperable problem in terms of enforcement, and basically wipe the slate clean in the long run we will be the wiser.

Mr. DAUB. But you do have a better system because this bill provides for—a part of the bill which I support strongly, and that is, contrary to my Chamber friends—I think the employer sanction part of this legislation is really the answer. And that is one of the reasons I want to work to see to it that we do get a bill this year. Because I think, regardless of all the concern and criticism about that, we can devise as fair a way as one can imagine for an enforcement system. If we require under quota that sponsored person to have an affidavit of support and the financial means at that legal immigrant's disposal to keep them from being a public charge, then I see no reason why you cannot in this committee continue to aggressively pursue the use of employer sanctions. And I think that is the answer.

I realize there is a no man's land in between. Where I say 1973 to 1981 or 1982 or 1983, that becomes a matter of what I call enforcement clean-up, rather than saddling the States with a proportion of expense and the Federal Government with a proportion of the expense vis-a-vis the unemployment factor we now have—and I think we can manage that gap better if we have the employer sanction provisions. And I hope you recognize I do support those provisions.

Mr. LUNGREN. I'm sure you understand the employer sanctions are only prospective.

Mr. DAUB. I appreciate that. Again, I appreciate there's a no man's land there. You defined it accurately, and that becomes a matter of enforcement.

Mr. LUNGREN. As long as they stay in the job that they had at the time the law goes into effect and came here after 1973, they would not be subject to enforcement—that is, their employer would not be subject to enforcement.

Mr. DAUB. If they came prior to 1973.

Mr. LUNGREN. No; if they came after 1973. What I'm saying is if they fall in that no man's land that came here after 1973, your registry date, yet they maintain the same employment they had at the



time this law goes into effect, they are in effect grandfathered with respect to any sanctions against their employers.

Mr. DAUB. Yes, but they themselves are not.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida, Mr. McCollum, is recognized for 5 minutes.

Mr. MCCOLLUM. I wish to commend the gentleman for his presentation. I agree wholeheartedly with the registry date position and with the desire to substitute it for legalization. I think my good friend and colleague from California, who frequently combats with me on the subject, knows that there is another side, which you are articulating very well and you mentioned and alluded to it, which is employer sanctions. Because if we put those in place, those who have been here since 1973 will over a period of time by attrition wind up moving from one position to another, and I believe a large proportion of them without enforcement will go back on their own because they won't have a job.

Mr. DAUB. There's another thing you need to know. If you look at the data that we are best able to examine in terms of who these people are, and if you assume there's 10 million or assume there's 4.5 million, some of those people are young, some are old people, some are impaired in some way, physically or mentally, and some are just plain not seeking work. So you are probably looking at only a factor of 25 percent of this figure, whatever it is, that really impact in terms of job displacement right now.

If that is indeed true, Congressman Lungren, that attrition is going to happen very rapidly between 1973 and 1983 or 1984. The movement of these people will be very rapid. And I don't see it as a real major problem to the policy we would establish if we went strictly to a blanket legalization.

Mr. MCCOLLUM. You do see a major problem, though, with the magnet effect of legalization up to the current time which is drawing more people across the borders, as the latest issue of U.S. News & World Report indicates is happening right now.

Mr. DAUB. I think there's no doubt about it. But this isn't new. I think you have all worked with this issue long enough to have seen what's happened at each 10- or 12-year increment in our history. The magnet effect, in my judgment, isn't nearly as bad right now, Mr. McCollum, as it's going to be once we establish a precedent for a sweeping use of the legalizing of one's illegal status. If we are more cautious about it, you know, "If you came in 1975 or 1978 you are just not free, you are not going to get off the hook if you get caught," I think we've sent a message out there that we're not going to participate in being overwhelmed by the magnet effect, as it is called.

Mr. MCCOLLUM. I yield back my time.

Mr. MAZZOLI. Thank you.

Thank you very much, Hal.

Mr. DAUB. Thank you very much. I look forward to working with you, Mr. Chairman.

Mr. MAZZOLI. Bless you.

We now welcome our next witness, the congressman from the District of Columbia, my good friend, my congressional classmate,

and our eminent first baseman—not necessarily in that order—Walter Fauntroy.

We welcome you, Walter. And your statement will be made a part of the record. You are free to read it speak from it.

#### TESTIMONY OF HON. WALTER FAUNTROY, DELEGATE FROM THE DISTRICT OF COLUMBIA

Mr. FAUNTROY. Thank you so very much, Mr. Chairman. And I want to thank you and the other distinguished members of the committee for inviting me to appear before the subcommittee to offer testimony on H.R. 1510. I also want to formally thank you and the staff of the subcommittee for the willingness to engage in meaningful dialogue and to consider the concerns which other members and I have expressed.

Mr. MAZZOLI. Thank you very much.

Mr. FAUNTROY. I appear before you as chair of the Black Caucus Task Force on Haitian Refugees. I also appear before you as a Member of Congress whose constituency includes many peoples representative of this "New Immigration," who have come to our country from the Caribbean, from Africa, and Central America and are contributing to our community.

Before discussing my reservations to specific provisions of H.R. 1510, I would like to stress two points which for me serve to frame the issues embodied in the legislation before the subcommittee.

First, the debate on this question must be free of scapegoating and acrimony that somehow links the crisis confronting our economy with the phenomena of immigration and refugee policy. I am quite aware that there are some pressures on the labor market resulting from the presence of undocumented entrants. I am also acutely aware of the fact that these entrants are easily exploited and victimized.

Needless to say, however, our economic crisis will not be solved in any significant way by the resolution of the issues before this subcommittee. This is not a jobs bill. Our focus should be clearly on it as an immigration issue, and we should address it in that context.

Our economic problems are profound, involving issues basic to the competitiveness of our economic system, and the solution to the problem of unemployment requires fiscal and monetary policies that affect the labor market and work to revitalize our industrial base. Black leadership will not be diverted by the potential for scapegoating in a national debate on immigration, but will work to bring together a coalition of conscience that will pass genuine job creation legislation.

My second point before I address the proposals of H.R. 1510 is the present and past management neglect, underfunding, and understaffing of the Immigration and Naturalization Service. INS is unable to undertake the enforcement of existing laws in a timely and efficient manner. Additional duties and responsibilities emanating from the passage of this bill would greatly exacerbate an already chaotic situation.

In the Washington, D.C., area district office, which is considered the flagship office of the Service, there is a serious lack of enough

competent and well-trained staff. The staff is overworked, and in spite of their dedicated attempts to perform their duties and to be both efficient and courteous to the public, they are simply overwhelmed by the workload.

Just to cite one statistic: it takes 12 months to 3 years to get an application for naturalization processed. The system lacks the personnel and management structure necessary for carrying out the provisions of H.R. 1510. This problem is paramount and its correction would involve a significant allocation of additional resources to the Immigration and Naturalization Service. I would submit that the allocation of additional resources should precede the undertaking of any additional responsibilities by INS.

I also wish to stress my concern that there are no black or Hispanic employees at the senior executive policymaking level of the Immigration and Naturalization Service. This points to the urgent need for affirmative action and for making the Service more representative of the public and the clientele which it serves.

I wish now to speak to four provisions of H.R. 1510: access to judicial review for asylum applicants, summary exclusion, legalization, and employer sanctions.

First, with respect to access to judicial review, I want to commend you, Mr. Chairman, and the subcommittee for structuring a more independent process for adjudicating asylum claims. I think the system that is recommended in this legislation is a positive step forward and should be supported. However, I must state my firm opposition to a provision in the section dealing with asylum that undermines fundamental due process by removing the role of the Federal district courts in reviewing applications for asylum.

As I read the section that concerns judicial review and the relevant Committee on the Judiciary report language, asylum applicants would be denied access to the Federal district courts for review of the lawfulness and constitutionality of INS processing of asylum claims. I quote from the committee report, 97-890, page 50:

The Committee Amendment, however, makes clear that regardless of whether or not the alien is in custody, the proper and sole avenue of review is through the circuit courts.

The Committee is concerned with the reasoning of the Smith Court and thus has adopted provisions in this legislation to insure that no district court shall have jurisdiction under 28 U.S.C. Section 1331, and 8 U.S.C. Section 1329 or any other provision of law to hear cases involving final orders of deportation or exclusion. This prohibition on premature petitioning of the courts encompasses not only final orders denying the asylum applications but also any actions or inactions by the Service or the administrative law judges, or the USIB, or any other party which even tangentially relates to the manner in which the asylum process is carried forth.

My overriding concern is that the proposed legislation will restrict the right of all asylum claimants to judicial review of administrative agency action. Judicial review, such as that provided in the case of the *Haitian Refugee Center v. Smith*, is mandated not only because of domestic and international legal norms, but most importantly because it is essential to our Nation's sense of fundamental justice and fairness; and above all, it is an indispensable remedy within our system of laws.

Our constitutional system of checks and balances demands that every governmental action or administrative act be subject to a degree of judicial scrutiny, and it is fundamentally incompatible



with our system of government for a department of the executive branch of government to be the sole arbitrator of its own acts. Judicial scrutiny is especially crucial in the context of claims for political asylum because the stakes are so very high, and miscarriages of justice may well have grave consequences that can never be corrected. Federal court jurisdiction over final decisions of the Immigration Service must be maintained not only to protect refugees seeking asylum in the United States, but also because it is a fundamental right of all persons residing within our country.

It is true H.R. 1510 allows individuals access to the Federal circuit courts of appeal. This is not adequate. In the last 2 years the circuit courts of appeal have considered only 12 cases involving political asylum. This reflects, among other things, the reality that most individual asylum applicants simply do not have the resources or access to lawyers specializing in immigration law and refugee matters.

Mr. Chairman, the restrictions on judicial review contained in H.R. 1510 represent yet another court-stripping effort hostile to the principle of the rule of law.

Mr. MAZZOLI. I am really constrained to interrupt at this point because I really seriously dispute that characterization of the bill.

Let me say that in the current law, an asylee or prospective asylee has no automatic right of judicial review of the question of his or her asylum. That is done through the technique of habeas corpus.

This bill, because of complaints and concerns raised by the people who deal in this question of asylum, guarantees—guarantees, not allows; you use the term “allows”—the term precisely is “guarantee”—a right of review at the circuit court of everything which has gone before administratively.

The gentleman seems to suggest that what we have done is restrict current law. We have so much expanded current law on the subject of asylum and the guarantees of it, and there are a lot of people who are against our bill because of this particular section. They say we have gone too far; we are not going to really cure the problem.

I did not want to interrupt the gentleman, but that part about saying this is court-stripping is not, in my judgment, honestly very accurate.

Mr. FAUNTROY. Well, I can understand the gentleman's feeling. And had he, as I have, talked with Haitian refugees who are without class-action-suit capability and without any understanding of what their rights are under our law, in my view—

Mr. MAZZOLI. We may remain in dispute on this term. I have worked with the gentleman's brother when we did go to Florida a year ago. And the way we drafted our bill originally is very different than how it is today. And it's different today because of the effective testimony like your brother's and yours in the last Congress, which led us, contrary to the original draft of this bill, to the position of saying, “You, as a would-be asylee, are guaranteed—guaranteed—the right of review in a judicial setting of the questions raised below.”

The fact there have been only two or three cases in the circuit court to date is because that system just does not work today. Now

you have to get to the circuit court by appeal from the district courts, so it would assume there are not many appeals to the circuit courts. But in our bill you'd get to the circuit court automatically if you wanted to have a judicial review of administrative action.

But at any rate, you can proceed. We will go back to this at some later time.

Mr. FAUNTROY. Well, as I have indicated, this provision is clearly a direct response to the success of the Haitian plaintiffs in the case of the *Haitian Refugee Center vs. Smith*. Had there been a commitment to and a system capable of providing genuine due process consistent with law and the Constitution, the 5,000 plaintiffs wouldn't have been forced to seek redress in the Federal district court. If the executive branch conforms to the requirements of the law in adjudicating applications for asylum, there will be no judicial intervention. This is the lesson, I think, of the Haitian refugees.

I have in the last 8 months traveled twice, for example, on fact-finding missions to Haiti to assess the human rights and economic situation in Haiti. I can attest that the human rights situation in Haiti is dire. In November 1981, the Congressional Black Caucus task force on Haitian refugees determined that we could not change what we believe to be our country's inhumane and racist policies towards Haitian refugees in time to prevent tragedies such as we saw played out on the shores of Florida in the fall of 1981. There were some 40 dead bodies that were deposited on the shore.

Mr. HALL. Will the gentleman yield?

Are you saying that the United States of America people killed those 40 people?

Mr. FAUNTROY. No, not at all.

Mr. HALL. You prefaced it by stating "our country's inhumane and racist policies toward Haitian refugees." You say the 40 people that washed ashore—you're not saying we were responsible for that, are you?

Mr. FAUNTROY. No, the key phrase there was that we couldn't wait until we deal with what we believe to be discriminatory practices with respect to our own INS to deal with the situation in Haiti where people are so desperate that they would risk coming here in shabby boats and the like that crack up and end up with people dying at sea, and in this instance, in the fall, if you recall, they died within eyesight of the shores and were washed up.

It was with that in mind that Congresswoman Shirley Chisholm and I determined to have a face-to-face dialog with President Duvalier and other members of the Government of Haiti on the issues of human rights and economic development for and with the people of Haiti.

The situation there of human rights is distressing. It's bad. There exist no human rights in Haiti such as we know them in the United States. We have no assurance that all of the returnees who have been returned forcibly from our country to Haiti remain safe, free, and well. The Department of State will certify that all is well, but in fact what they are certifying is that only the people they have been able to locate and interview have indicated that they are well and have not complained of harassment. They have been

unable to locate many returnees and their status is far from certain.

It is my position and the position of the Congressional Black Caucus task force on Haitian refugees that the human rights situation in Haiti is such that it is reasonable to assume that a significant number of Haitian refugees would in fact meet the legal definition of asylee if they were or had been afforded genuine due process.

Second, I am also deeply troubled by the provision that would permit the summary exclusion of asylum claimants attempting to enter the United States if they are unable to demonstrate immediately a bona fide claim to asylum. Aliens with valid claims to asylum, but without an understanding of our laws or an opportunity to obtain the assistance of legal counsel, could be summarily excluded from entry and forcibly returned to possibly face persecution and grave personal danger. The practice of summary exclusion in such cases violates our fundamental traditions of due process and that of providing asylum for those feeling injustice and persecution, as well as our obligations of nonrefoulement under international law, article 33 of the U.N. Convention on the Status of Refugees.

I am strongly opposed to the concept of summary exclusion. Since 1903 the law has provided a statutory right to a hearing before an immigration judge for persons seeking to enter the United States. Summary exclusion would be a radical departure from this time-tested commitment to procedural fairness.

Third, with reference to the provision that will provide for legalization, I congratulate the chairman and the subcommittee for structuring this provision in the legislation. I think it is a rational, fair, realistic, and compassionate way to deal with the problem of an underground population.

However, the proposed legislation would arbitrarily limit eligibility for legalization to those undocumented persons arriving in the United States before January 1, 1980, or January 1, 1981, for Cubans and Haitians known to INS. I believe that it is more practical and certainly more equitable to include in the legalization program all otherwise eligible undocumented aliens who arrived in the United States before January 1, 1982. In addition to a general concern that all undocumented aliens be equally protected under the legalization program, extension of the legalization cutoff date is necessary to effectively correct the very serious problems that have resulted from the administration's highly controversial program of prolonged mass detention of the Haitian boat people which began in May 1981.

I recognize the political difficulties involved in this matter, but I feel compelled to raise questions like: What will we do with those entrants who have entered since January 1, 1980? Are we to engage in mass deportation programs? What impact would this have on our communities?

Fourth, I would like to make some comments on the provision for employer sanctions. Mr. Chairman, as is the case with many of our colleagues, I share the concern that the implementation of an employer sanctions program will have an inherent potential for discrimination. Without taking a lot of time, because this issue was



fully ventilated in a debate which took place during the last Congress on December 16, 17, and 18, I would simply say that this problem may be alleviated, and it might get some further consideration within the black and Hispanic communities if the subcommittee, the committee, and indeed our colleagues throughout the House, would give more serious consideration to the very constructive and, I believe, necessary amendments offered by the dean of the Congressional Black Caucus, Congressman Augustus Hawkins. I would also state, in discussing this provision, that I have the same concern with the Immigration and Naturalization Service's ability to administer this enforcement provision in an efficient, fair, and nondiscriminatory manner.

Given these concerns, I ask your consideration for including in this provision a sunset requirement which would provide for the evaluation of employer sanctions and reenactment by Congress based upon your experience.

Mr. Chairman, in conclusion, I want to thank you and the other members of the subcommittee for inviting me to testify. I think it is representative of the way the subcommittee has conducted itself during the course of undertaking this monumental task of providing reform and control of our immigration policy. I look forward to continued dialog with the chairman and other members of the subcommittee as we seek to forge some solution to a very difficult problem. I do not consider my testimony as a position written in concrete, for I see it merely as the beginning of a dialog. Our task is to shape in the 98th Congress legislation that is neither mean, nativist, nor racist and, ultimately, is workable.

Thank you.

[The complete statement follows:]

TESTIMONY OF HON. WALTER E. FAUNTROY, MEMBER OF CONGRESS, AND CHAIRPERSON OF THE CONGRESSIONAL BLACK CAUCUS TASK FORCE ON HAITIAN REFUGEES

#### INTRODUCTION

Good morning, Mr. Chairman. I want to thank you and the other distinguished Members for inviting me to appear before the Subcommittee to offer testimony on H.R. 1510, the Immigration Reform and Control Act of 1983. I also want to formally thank you and the staff of the Subcommittee for the willingness to engage in meaningful dialogue and to consider the concerns which other Members and I have expressed.

I appear before you carrying the portfolio of the Chair of the Congressional Black Caucus Task Force on Haitian Refugees. I also appear before you as a Member of Congress whose constituency includes many peoples representative of the "New Immigration", who, have come to our country from the Caribbean, Africa, and Central America and are contributing to our community.

#### STRUCTURING THE DEBATE

##### *Scapegoating and the economic crisis*

Before discussing my reservations to specific provisions of H.R. 1510, I would like to stress two points which for me serve to frame the issues embodied in the legislation before the Subcommittee. First, the debate on this question must be free of scapegoating and acrimony that somehow links the crisis confronting our economy with the phenomena of immigration and refugee policy. I am quite aware that there are some pressures on the labor market resulting from the presence of undocumented entrants. I am also acutely aware of the fact that these entrants are easily exploited and victimized.

Needless to say, however, our economic crisis will not be solved in any significant way by the resolution of the issues before this Subcommittee. This is not a jobs bill!

Our focus should be clearly on it as an immigration issue, and we should address it in that context.

Our economic problems are profound, involving issues basic to the competitiveness of our economic system and the solution to the problem of unemployment requires fiscal and monetary policies that affect the labor market and work to revitalize our industrial base. Black leadership will not be diverted by the potential for scapegoating in a national debate on immigration, but will work to bring together a coalition of conscience that will pass genuine job creation legislation.

#### THE MANAGEMENT SITUATION OF INS

My second point before I address the proposals of H.R. 1510 is the present and past management neglect, underfunding, and understaffing of the Immigration and Naturalization Service. I.N.S. is unable to undertake the enforcement of existing laws in a timely and efficient manner. Additional duties and responsibilities emanating from the passage of this bill would greatly exacerbate an already chaotic situation. In the Washington D.C. Area District Office, which is considered the flagship office of the Service, there is a serious lack of enough competent and well-trained staff. The staff is overworked and in spite of their dedicated attempts to perform their duties and to be both efficient and courteous to the public, they are simply overwhelmed by the workload. Just to cite one statistic: it takes 12 months to 3 years to get an application for naturalization processed. The system lacks the personnel and management structure necessary for carrying out the provisions of H.R. 1510. This problem is paramount and its correction would involve a significant allocation of additional resources to the Immigration and Naturalization Service. I would submit that the allocation of additional resources should precede the undertaking of any additional responsibilities by the Immigration and Naturalization Service.

I wish also to stress, before I begin to discuss specific provisions of H.R. 1510, my concern that there are no Black or Hispanic employees at the senior executive policy-making level of the Immigration and Naturalization Service. This points to the urgent need for affirmative action and for making the Service more representative of the public and the clientele which it serves.

Today, I wish to speak to four provisions of H.R. 1510 which gravely concern me and require the most careful consideration.

The four provisions are: Access to judicial review for asylum applicants; summary exclusion; legalization; and employer sanctions.

#### ACCESS TO JUDICIAL REVIEW

First, with respect to access to judicial review, I want to commend you Mr. Chairman and the Subcommittee for structuring a more independent process for adjudicating asylum claims. I think the system that is recommended in this legislation is a positive step forward and should be supported. However, I must state my firm opposition to a provision in the section dealing with asylum that undermines fundamental due process by removing the role of the Federal District Courts in reviewing applications for asylum.

As I read the section, that concerns judicial review and the relevant Committee on the Judiciary report language, asylum applicants would be denied access to the Federal District Courts for review of the lawfulness and constitutionality of I.N.S. processing of asylum claims. I quote from the Committee Report, 97-890, page 50:

"The Committee Amendment, however, makes clear that regardless of whether or not the alien is in custody, the proper and sole avenue of review is through the circuit courts.

"The Committee is concerned with the reasoning of the Smith Court and thus has adopted provisions in this legislation to insure that no district court shall have jurisdiction under 28 U.S.C. Section 1331, and 8 U.S.C. Section 1329 or any other provision of law to hear cases involving final orders of deportation or exclusion.

"This prohibition on premature petitioning of the courts encompasses not only final orders denying the asylum applications, but also any actions or inactions by the Service or the administrative law judges, or the U.S.I.B., Or any other party which even tangentially relates to the manner in which the asylum process is carried forth."

My overriding concern is that the proposed legislation will restrict the right of all asylum claimants to judicial review of administrative agency action. Judicial review such as that provided in the case of the *Haitian Refugee Center v. Smith* is mandated not only because of domestic and international legal norms, but most important-



ly because it is essential to our nation's sense of fundamental justice and fairness; and above all, it is an indispensable remedy within our system of laws.

Our constitutional system of checks and balances demands that every governmental action or administrative act be subject to a degree of judicial scrutiny, and it is fundamentally incompatible with our system of government for a department of the Executive branch of government to be the sole arbitrator of its own acts. Judicial scrutiny is especially crucial in the context of claims for political asylum because the stakes are so very high, and miscarriages of justice may well have grave consequences that can never be corrected. Federal court jurisdiction over final decisions of the Immigration Service must be maintained not only to protect refugees seeking asylum in the United States, but also because it is a fundamental right of all persons residing within our country.

It is true H.R.1510 allows individuals access to the Federal Circuit Courts of Appeal. This is not adequate. In the last two years the Circuit Courts of Appeals have considered only twelve cases involving political asylum. This reflects, among other things, the reality that most individual asylum applicants simply do not have the resources or access to lawyers specializing in immigration law and refugee matters.

Mr. Chairman, the restrictions on Judicial Review contained in H.R. 1510 represent yet another court stripping effort hostile to the principle of the rule of law. This proposal is clearly a direct response to the success of Haitian plaintiffs in the case of the *Haitian Refugee Center v. Smith*. Had there been a commitment to and a system capable of providing genuine due process consistent with law and the Constitution, the 5,000 plaintiffs wouldn't have been forced to seek redress in the Federal District Court. If the Executive Branch conforms to the requirements of the law in adjudicating asylum applications, there will be no judicial intervention. This is the lesson of the Haitian Refugees.

Mr. Chairman, I have in the last eight months traveled twice on fact-finding missions to Haiti to assess the human rights and economic situation in Haiti. I can attest that the human rights situation in Haiti is dire. In November 1981, the Congressional Black Caucus Task Force on Haitian Refugees determined that we could not change what we believe to be our country's inhumane and racist policies toward Haitian refugees in time to prevent tragedies such as we saw played out on the shores of Florida in the Fall of 1981. It was with that in mind that Congresswoman Shirley Chisholm and I determined to have a face-to-face dialogue with President Duvalier and other members of the Government of Haiti on the issues of human rights and economic development for and with the Haitian people.

Mr. Chairman, the situation of human rights in Haiti is most distressing. It is bad. There exist no human rights such as we know them, in Haiti. We have no assurances that all of the returnees who have been returned forcibly from our country to Haiti remain safe, free and well. The Department of State will certify that all is well, but in fact what they are certifying is that only the people they have been able to locate and interview have indicated that they are "well" and have not "complained of harassment." They have been unable to locate many returnees and their status is far from certain. It is my position and the position of the Congressional Black Caucus Task Force on Haitian Refugees that the human rights situation in Haiti is such that it is reasonable to assume that a significant number of Haitian refugees would in fact meet the legal definition of asylee if they were or had been afforded genuine due process.

#### SUMMARY EXCLUSION

Second, I am also deeply troubled by the provision that would permit the "summary exclusion" of asylum claimants attempting to enter the United States if they are unable to demonstrate immediately a bona fide claim to asylum. Aliens with valid claims to asylum, but without an understanding of our laws or an opportunity to obtain the assistance of legal counsel, could be summarily excluded from entry and forcibly returned to possibly face persecution and grave personal danger. The practice of summary exclusion in such cases violates our fundamental traditions of due process and that of providing asylum for those fleeing injustice and persecution, as well as our obligations of non-refoulement under international laws (Article 33 of the U.N. Convention on the Status of Refugees).

I am strongly opposed to the concept of summary exclusion. Since 1903 the law has provided a statutory right to a hearing before an immigration judge for persons seeking to enter the United States. Summary exclusion would be a radical departure from this time tested commitment to procedural fairness.



## LEGALIZATION

Third, with reference to the provision that will provide for legalization, I congratulate the Chairman and the Subcommittee for structuring this provision in the legislation. I think it is a rational, fair, realistic, and compassionate way to deal with the problem of an "underground" population.

However, the proposed legislation would arbitrarily limit eligibility for legalization to those undocumented persons arriving in the United States before January 1, 1980, or January 1, 1981 for Cubans and Haitians "known to I.N.S." I believe that it is more practical and certainly more equitable to include in the legalization program all otherwise eligible undocumented aliens who arrived in the United States before January 1, 1982. In addition to a general concern that all undocumented aliens be equally protected under the legalization program, extension of the legalization "cut-off" date is necessary to effectively correct the very serious problems that have resulted from the Administration's highly controversial program of prolonged mass detention of the Haitian "boat people" which began in May, 1981.

I recognize the political difficulties involved in this matter, but I feel compelled to raise questions like: "What will we do with those entrants who have entered since January 1, 1980? Are we to engage in mass deportation programs? What impact would this have on our communities?"

## EMPLOYER SANCTIONS

Fourth, I would like to make some comments on the provision for employer sanctions. Mr. Chairman, as is the case with many of our colleagues, I share the concern that the implementation of an employer sanctions program will have an inherent potential for discrimination. Without taking a lot of time, because this issue was fully ventilated in a debate which took place during the last Congress on December 16, 17, and 18, I would simply say that this problem may be alleviated, and it might get some further consideration within the Black and Hispanic communities if the Subcommittee, the Committee, and indeed our Colleagues throughout the House would give more serious consideration to the very constructive and, I believe, necessary amendments offered by the Dean of the Congressional Black Caucus, Congressman Augustus Hawkins. I would also state, in discussing this provision, that I have the same concern with the Immigration and Naturalization Service's ability to administer this enforcement provision in an efficient, fair, and nondiscriminatory manner.

Given these concerns, I ask your consideration for including in this provision a sunset requirement which would provide for the evaluation of employer sanctions and reenactment by Congress based upon experience.

## CONCLUSION

Mr. Chairman, in conclusion, I want to thank you and the other members of the Subcommittee for inviting me to testify. I think it is representative of the way the Subcommittee has conducted itself during the course of undertaking this monumental task of providing reform and control of our immigration policy. I look forward to continued dialogue with the Chairman and other members of the Subcommittee as we seek to forge some solution to a very difficult problem. I do not consider my testimony as a position written in concrete, for I see it merely as the beginning of a dialogue. Our task is to shape in the 98th Congress legislation that is neither mean, nativist, nor racist and, ultimately, is workable.

Thank you!

Mr. MAZZOLI. I will yield myself 5 minutes.

Let me thank the gentleman for that excellent testimony which will certainly be looked at by all of us. And let me ask the gentleman just a couple of very quick questions.

On the bottom of your page 9 you talk about adding a sunset requirement to employer sanctions. Would the gentleman and would the Black Caucus support employer sanctions were it to be sunsetted?

Mr. FAUNTROY. I think with the kinds of protections against discrimination that Mr. Hawkins has suggested in his amendments with which you are familiar, we would support that, and on the

strength of the view that it would give us an opportunity to reevaluate and see if in fact it would accomplish the end——

Mr. MAZZOLI. That poses a problem because Mr. Hawkins' amendment got beat by over 100 votes, the first of his series of amendments, which means that even with the changed composition in the House of the 98th Congress, his amendments probably do not have support from within the total House.

A bill crafted like ours, with perhaps further protections on the discrimination feature, worked on with Congressman Frank and others, and with the sunset, do you think there is a chance that you would support that?

Mr. FAUNTROY. Well, again, I can't speak for the entire caucus on that.

Mr. MAZZOLI. And you say you are not set in concrete. I would appreciate it if you would, on behalf of the caucus, take that back. I think our bona fides in trying to seek a nondiscriminatory employer sanctions is spread upon the record for the last 2 years. Our blood is all over the floor of this room and the floor of the House, trying to find just such an elusive goal.

But I would appreciate it if you would take that back.

Second, on the bottom of your page 8, you talk about those entrants who have come after January 1, 1980, which would have been the cut-off date.

When you use the term "entrants," those people who came from Haiti before January 1 1981, which was the date we used in our bill, are entrants. But when you use the term "entrants," it is as if they were part of that class which was called "Cuban-Haitian entrants, status pending."

Now, all of the "Cuban-Haitian entrants, status pending" people, and upped a little bit to January 1, 1981, are affected by our bill positively, because they are included in our legalization formula. You were here in the room when Mr. Daub held forth with the gentleman from California in a discussion about using these registry dates. No matter what date you use, Walter, at some point the gate clangs and there is going to be someone inevitably coming in afterwards.

So whatever date we pick, we have to grit our teeth and say we are never going to be so up to date that somebody does not come in after the date. So that somebody who is here, whether those who come after 1980, after 1981, after 1982, is going to have to be looked at carefully, kindly, but thoroughly. For the point of it is, if they cannot stay, they are going to have to go back home.

Mr. FAUNTROY. I'm just trying to narrow the workload.

Mr. MAZZOLI. One last question I would ask you: You have been to Haiti twice and followed the situation carefully. On your page 6 you talk about, "They"—meaning the State Department—"have been unable to locate many returnees," and so forth.

Is the caucus able to monitor anything about the returnees, and do you have any more recent information about their whereabouts and about their well-being?

Mr. FAUNTROY. Not on a broad basis. We have talked with prisoners and got accounts of people who upon return have had to go into hiding. But there is no way we can quantitatively or qualitatively document that kind of thing.

Mr. MAZZOLI. I thank the gentleman. My time has expired.

The gentleman from Texas is recognized.

Mr. HALL. You always raise some interesting points in your testimony. You said that you and Shirley had a face-to-face contact with President Duvalier. If it is proper to ask this question, Did you get any information from that face-to-face contact that the country of Haiti would be willing to work in any way with the United States in solving some of its human rights problems and economic development problems in that country dealing with the Haitian people?

Mr. FAUNTROY. We certainly got that indication, and it is not only a response to our outrage at what we feel to be the desperation with which people flee Haiti, but also responsive to the International Monetary Fund requirements of being placed upon them and their need for aid.

We have been saying we are prepared to work for meaningful aid and trade, but not without a serious effort on their part to eliminate the human rights violations that have been so well documented over the years.

Mr. HALL. Do you have any estimates or numbers as to the number of returnees that have been returned from our country to Haiti?

Mr. FAUNTROY. I cannot give you that, unfortunately. I will see if we have access to that and provide you an estimate.

Of course, there is cooperation between the Haitian Government and the United States now, as you know, with our interdiction procedures.

Mr. HALL. Well, the President of Haiti has not changed his position greatly toward his own people, has he, in the last several months?

Mr. FAUNTROY. Well, we have seen evidences of a disposition to change. For example, on last April 22 he announced for the first time in his presidency for life that there would be local elections. And they were originally scheduled on March 9 but the Pope's visit there has delayed that, but he has promised those elections in April of 1983. And we intend to monitor those elections very carefully to see if there is any evidence that change is on the horizon.

Mr. HALL. But the only candidates that have come forth up to now are his candidates, aren't they?

Mr. FAUNTROY. No; that is not true. I have talked with potential candidates who are not perceived to be Duvalierists. Yet, I remain concerned that, given the regulations that have been formulated, independent candidates may not have a fair chance at winning elections. And I'm watching it very carefully.

Mr. HALL. Do you know how many Haitians are still attempting to come into the United States? Are there any figures that are available to you that you could make available to this committee?

Mr. FAUNTROY. I cannot, but I could suggest to the gentleman that you contact the Coast Guard and possibly the State Department. They could get you the interdiction figures.

Mr. HALL. Is it your understanding that at this time those who are being returned—I gather from your testimony that we know some are there safe, free, and well, but we don't have the information that all of those people have returned in that same status.



Is it your position that it should be the responsibility of the U.S. Government to develop more fully as to whether or not those people who have returned, all of them, are safe and well? Do we have the right as a country—although we know that it should be improved, the human rights situation in that country and others—do we have the right to go into that country—"we" being the U.S. Government—with whatever method we may use, and make that determination and try to write a bill here in the Congress based on what they are doing there about their own human rights internally?

Mr. FAUNTROY. I think that we have a responsibility to fairly judge a claim of a person who comes to our shores for political asylum. And if we are to fairly judge that, we ought to gain as much information as we can. And we do that with respect to Eastern Europe and Russia.

Mr. HALL. Don't you think the majority of those people, Walter, who come here from Haiti are going to know when they come, from the press and whatever, that if they say they are coming here for political asylum they automatically get a hearing?

Mr. FAUNTROY. When you say they are going to know from the press—

Mr. HALL. Not the president and press down there, but don't you think the grapevine will give those people sufficient knowledge to know that when they come to these shores, if they are accosted or stopped by a border patrol and they tell that person, "We are here for political asylum," whatever method they tell them, aren't they going to know they have a legal right to go into the courts and test it out—which will give them time to stay here. They cannot be deported while that's going on.

Mr. FAUNTROY. If they get here. They may get in our territorial waters, but if they don't hit the land—

Mr. HALL. Well, a bunch of them got here. These folks living in Florida say it looks like some Haitians are down there and Cubans and the like. They got here some way.

Mr. FAUNTROY. What's your point?

Mr. HALL. My point is: These people who are coming here, don't you think when they hit these shores they are going to know if they tell that person, "We're here because we're seeking political asylum"—

Mr. FAUNTROY. Then they're going to get a hearing.

Mr. HALL [continuing]. They're going to get a hearing.

Mr. FAUNTROY. Yes.

Mr. HALL. Now, you don't know the numbers and I don't either, but don't you think the vast majority of the Haitians and the Cubans who come to the Florida shores are going to know before they get here that if they say, "We want political asylum; we're coming because of that," they're going to say that to that officer?

Mr. FAUNTROY. True.

Mr. MAZZOLI. The gentleman's time has expired. Thank you.

The gentleman from California.

Mr. LUNGREN. Thank you.

I also want to echo the words of the chairman, that we appreciate your testifying here before us, both individually and on behalf

of the Black Caucus, so we can have your input as we try to perfect what we had thought was a pretty good bill last time.

I have been one of those who has taken the INS to task for not doing enough in many situations in the past, although I have always tried to specify that Congress shares the blame, or probably has more of the blame, because we have understaffed them over the years, giving them too much to do and not enough to do it with.

But I did want to just comment on the mention you made that the INS does not have people of minority background in leadership positions. I think it's just about the only high government agency that has had a Hispanic heading it. Leonel Castillo was the Commissioner of INS for my first 2 years here.

Mr. FAUNTROY. I do recall, incidentally, with great pleasure his tenure.

Mr. LUNGREN. Well, I happen to think he was really trying to do a good job. I don't want to get partisan here, but I don't think the administration at that time supported him. I think they let him hang out there to dry when he was trying to do some very good things that we're all trying to do.

Mr. FAUNTROY. That's why we need affirmative action in the agency.

Mr. LUNGREN. Another thing is Joe Salgado, Hispanic, is Associate Commissioner for Enforcement. The Director of the Office of Antismuggling is Hispanic, Umberto Marino. Twenty percent of the border patrol is Hispanic. And I think a slightly higher percentage of that reflects the makeup of the entire INS.

I am only familiar on the Hispanic side because in my area it is very notable that that agency has such a high percentage. I just wanted to at least mention it. In comparison with a lot of other agencies, at least from the Hispanic side, they've done a pretty good of having people in those positions, which doesn't mean they couldn't do a better job.

I'd like to get to the question of the dates.

You asked—and I think it's a question we have to answer—basically why did we pick the dates for a legalization program of January 1, 1980, or January 1, 1981, for Cuban-Haitians.

Interesting enough, it was the Select Committee on Immigration Policy, the Presidential Commission, that unanimously recommended that no one be eligible for legalization who was not in the United States before January 1, 1980. It was one of the very few things that there was unanimity on, and that included Patricia Harris, Father Hesburgh and others. And the reason they did it was they recognized if we were going to have a legalization program we have to try to fashion it in a way that does not unduly attract people, such that they think, "As soon as I get across the border there's going to be another amnesty program." And they made the judgment that that was essentially the date when serious discussion on the Commission took place with respect to the official American policy being one of a large legalization program. And that is why they recommended it, because they said it was reasonable to assume that via the grapevine many people would get the word and would come across for that purpose.

That is the rationale for their decision.

I guess I just asked you: Do you think that is a reasonable rationale or an insufficient rationale for putting that date forward? And do you see that there is some problem that if you bring the date contemporaneously up to the date of enactment you put the word out to people, "Hey, just wait until the next legalization is here since I'm across the border now."

Mr. FAUNTROY. That is precisely why I suggested going back to January 1, 1982, and shortening the workload on INS in their attempts to enforce it.

I do not recall when the Commission reported relative to the January 1980 date. Do you recall?

Mr. LUNGREN. The Commission adopted this recommendation on December 6 or 7, 1980.

Mr. FAUNTROY. 1980?

Mr. LUNGREN. Yes.

Mr. FAUNTROY. So I wouldn't say that when this bill passes and becomes law in July of 1983 that we should go back to January 1983. I'd say January of 1982.

Mr. LUNGREN. So there should be some period of time that is reasonable but you think it ought to be brought up a little bit more than what we have in the bill?

Mr. FAUNTROY. Yes.

Mr. LUNGREN. The other was the January 1, 1981, date for the Cuban-Haitian entrants. That basically was because the entrants' status that had been granted that group of people, which was a special status that we came up with—we had never seen it before and may never see again in terms of that particular status—that they had been there by that date, and since then those that have come here have come with the knowledge that circumstances have changed, that we are making an effort—not as President Carter said, to open our hearts and our arms to everyone that wanted to come. Do you again think we ought to bring that date more contemporaneously to the date of enactment?

Mr. FAUNTROY. I do. I think the larger the window, the more likely a person is to feel, "Gee, they won't detect me." But if it's a tighter window and they view us as being serious about this, people who have no legal basis for being here would be a little more careful, and they would know that the window, being as narrow as it is, they might get caught.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida.

Mr. McCOLLUM. Thank you.

I certainly appreciate the gentleman's testimony this morning. I respect him a great deal, being chairman of another subcommittee I have had the pleasure of serving on very much, and know he is not only knowledgeable in areas he testifies and comments on but he does his homework and presents it very well.

I have a very grave concern about due process myself, and my concern is doublefold. Perhaps the Florida perspective that I come from has given me that.

I am concerned with the slow process of dealing with asylum and the unfairness of it both to the public and to the people who are involved. My understanding from folks who deal in the area administratively now is that just routinely it's 2 years before we really



see the point where the process gets to where you really normally go to court or appeal it or whatever, and so forth.

But as a result of the concern over the due process and the slowness, I drafted an amendment last time, which the committee did not adopt, although we had a division vote on it, to establish a separate court independent of the Attorney General, an article I court, to deal with this subject, to deal with asylum, to deal with exclusion and deportation.

I don't know whether the gentleman is even aware of that, but I would be very interested in his feelings toward that and if he would be willing to carry that idea back to the Black Caucus. I plan to bring the idea forth again and perhaps in the form of an amendment.

Mr. FAUNTROY. May I say to the gentleman, I'd certainly like to look at that specifically. As we indicate in our testimony, we are happy to see the independent process that has been structured here as a step forward toward fair and speedy decisions on these matters, and I think that might be something we could support.

Mr. McCOLLUM. I would very much appreciate your looking at it. I have no other questions. I yield back my time.

Mr. MAZZOLI. Thank you.

The gentleman from New York wishes to question.

Mr. FISH. Thank you.

Before I arrived I understand that you were critical of the process dealing with expedited exclusion in this legislation, which appears in part C, section 121, starting at page 21 of the bill.

The way it is structured now is because the full Judiciary Committee, when it considered this legislation last fall, adopted an amendment I offered to the expedited exclusion provision, with the purpose of cranking in greater due process.

In other words, we require here that the examining Immigration officer, before excluding—this is the alien on the beach—an alien without a hearing, must inform him of his right to have an administrative law judge redetermine the conditions that govern the examining officer in the first section, that justify expedited exclusion.

It does not require the alien to demonstrate immediately a bona fide claim to asylum, which is in your testimony.

Mr. FAUNTROY. Yes.

Mr. FISH. The relevant language relates to whether the alien indicates his intention to apply for asylum.

And I ask you: In view of these provisions which were adopted to meet concerns such as were expressed today about expedited exclusion, haven't we met them?

Mr. FAUNTROY. It is your contention you don't require a bona fide claim at the point of encounter, and that the officer in this case is obligated to inform the person seeking asylum of his right to due process.

Mr. FISH. First of all, when the Immigration officer meets him and there is no indication of intention to apply—that is one of the grounds for exclusion. But then before excluding him, "The examining officer shall inform the alien of his right to have an administrative law judge redetermine the conditions" that led to the determination which was alluded to. And he has to inform them of those rights.

Mr. FAUNTROY. And should he elect to exercise those rights, your contention is that the judicial review and due process are available to him.

Mr. FISH [reading]:

The alien should not be so excluded without a hearing until and unless the administrative law judge, after a nonadversarial civil proceeding in which the alien may appear personally, redetermines the alien meets the condition of subclauses (1) through (3).

I ask you to take a look at that, because it went pretty far to try to accommodate the views of those who were concerned about the summary exclusion for someone who makes no claim for asylum, has no papers, no claim for citizenship, and so on.

A lot of people felt that he had no rights at all, and I felt that there should be some review over the Immigration officer's findings, so we cranked it in here. I wonder if it doesn't really meet the concerns that you obviously share, as I do, with the question of summary exclusion.

Mr. MAZZOLI. Thank you.

The gentleman's time has expired, and we thank our friend from the District of Columbia for his testimony.

We now invite to come forward Ambassador Diego Asencio from the Department of State who has worked long and hard on our bill. We welcome you, Diego.

Mr. Ambassador, your statement has been filed and we thank you for it, and it is a part of the record. You are welcome to speak from it, to it, however you wish, with perhaps a discussion of some of the major points.

#### TESTIMONY OF HON. DIEGO C. ASENCIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, DEPARTMENT OF STATE

Secretary ASENCIO. I will be happy to do that, Mr. Chairman. It is a short statement, so I will be a little more loquacious than I ordinarily am in this regard.

I am pleased to be here today to testify regarding this bill, and I congratulate you, Mr. Chairman, for introducing it so early in this session.

I might add one of the things I particularly think should be applauded is the fact that, I think, in reacting to what is essentially a negative public reaction with regard to this problem, you and your colleagues have turned it into a reform movement. That is highly laudable.

Mr. MAZZOLI. We thank you for that.

Secretary ASENCIO. My testimony, of course, parallels very closely what I said last year.

We continue to believe, for example, in the need for measures to regularize the status of some of those in the United States illegally, to reduce the pull factors that induce such illegality, and to expedite administrative procedures relating to admission, exclusion, and deportation. Moreover, we continue to support strongly the concept of addressing the problems resulting from illegal migration in an overall package approach.

In connection with the regularization of status proposal, I would also note that it would serve not only our own interests but would

diminish the concerns expressed by Mexico and other countries respecting the circumstances of their nationals in the United States.

I shall defer to the views of other agencies on issues that do not directly involve concerns of the Department of State, and will address the latter.

We appreciate the general validity of the user-fee concept. However, the Department has grave foreign relations and other reservations about the imposition of such fees at U.S. land border ports of entry. We believe that the mere imposition of such fees would itself almost certainly appear to Mexico and Canada as inconsistent with the spirit of cross-border cooperation which the President has emphasized. This reaction, based on a matter of principle, would at a minimum be another irritant in bilateral relations and could lead to reciprocal action.

In addition to these foreign relations concerns, we are disturbed by the essential impracticality of this proposal. We are all very aware of the traffic tie-ups that already exist at such ports. There would be a quantum jump in those delays if fees had to be assessed on a per capita basis. It is obvious that a simple unmanned toll booth operation would not suffice, not only because of fluctuating exchange rates in both neighboring countries but more particularly because such a system could account only for the vehicle and not for the number of passengers, let alone their nationality. I would note, however, that we prefer this bill's provision, which is not mandatory and seems more fair, to that in the Senate immigration bill.

We welcome the consensus on the need for special asylum officers but are seriously concerned that this bill does not incorporate a consultative role for the Department of State. We believe that State's expertise on foreign aspects bearing on asylum questions is essential to their proper adjudication. It is because the current statute does not make this clear that we prefer a legislative mandate for consultation to the current reliance on the Service's regulations which lack such a specific base.

We would prefer that the legislation provide that the Secretary of State make available to the Attorney General reports on the condition of human rights in all countries, and that the asylum adjudication officer should use such reports as general guidelines in making the asylum determination. We would also prefer that the legislation provide that the Secretary of State may submit comments on individual applications to the asylum adjudicator.

We regret also that portion of the asylum provisions which calls for open hearings but permits closed hearings upon the request of the applicant. At best we find it inconsistent with the recognition in section 124(c) of the need to protect documents associated with asylum hearings, and have some difficulty understanding how documents used at an open hearing can be kept confidential.

More important, we believe it is essential in the interest of the claimant, as well as of any family members or members of the same group still in the country from which the applicant has fled, that all materials bearing on the matter—especially those that the claimant presents—be confidential. We are concerned that many unsophisticated asylum claimants will not realize in advance that they have the right to a closed hearing nor an awareness of the



importance to others that the matter be treated on a confidential basis. By contrast, however, it seems certain that those who believe that publicity is a prerequisite to just treatment will instinctively seek an open hearing. We would urge, therefore, that this provision be amended to establish a closed hearing except at the expressed desire of the applicant.

With regard to the students provision, we find little merit in dropping the distinction between private students and sponsored exchange visitors and have to wonder whether foreign governments will not also be confused by this blurring of purpose. We would also note a probably unintentional inequity—certainly in contrast to our usual emphasis on family unification—in the waiver provision, which would make it possible for spouses of citizens and certain persons needed by industry to acquire resident status without first residing abroad for 2 years but would withhold that opportunity from the spouses of resident aliens.

We have no objection to the proposal to benefit certain children and surviving spouses of international civil servants who have long resided in the United States.

Finally, and of particular importance to State, is the nonimmigrant visa waiver provision. We believe that a waiver under the broader terms we originally proposed would prove to be effectively manageable. However, believing also that, if the program were initially limited as proposed in this bill, the Congress would in fact extend and expand it, we are prepared to accept the concept of a pilot program, limited in both duration and the number of countries. Not surprisingly, we would prefer the larger number, eight, that is in S. 529 to the five provided in this legislative proposal.

The modified criteria proposed for inclusion of a country in the program are, however, deeply troubling. They enlarge substantially the bases for exclusion from the list and, at the same time, they cut the percentage of incidence of those factors that would be permissible. This would preclude meeting the objectives of the provision—that is, to extend reciprocity to our closest allies who have waived visas for U.S. visitors for many years and to eliminate unnecessary processing of visas at our major posts. Some major countries would not qualify under this revision of standards.

We are particularly disturbed by the failure to use a 2-year average as the indicator. There are economic and political events that skew data from one year to the next for reasons not bearing on whether a country's nationals are good nonimmigrant risks. Use of only the prior year's data quite probably would result in such aberrations as a country not being found eligible for the program which should be or, worse, being found eligible when it should not be.

We recognize that some of the proposals about which we have expressed reservations are predicated on philosophic issues on which honorable men can honestly differ. We believe, however, that some may be essentially technical or drafting matters and would be pleased to work with the committee members and staff to develop modifications that would be mutually satisfactory.

[The complete statement follows:]

STATEMENT OF HON. DIEGO C. ASENCIO, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS

Mr. Chairman, members of the committee, I am pleased to be here today to testify regarding H.R. 1510, and I congratulate you, Mr. Chairman, for introducing it so early in this session. Although it differs in some respects from H.R. 5872 on which I testified last year, it closely parallels that bill in many particulars and my testimony, therefore, will bear a similar resemblance to my earlier remarks on it.

We continue to believe, for example, in the need for measures to regularize the status of some of those in the United States illegally, to reduce the "pull factors" that induce such illegality, and to expedite administrative procedures relating to admission, exclusion and deportation. Moreover, we continue to support strongly the concept of addressing the problems resulting from illegal migration in an overall "package" approach. In connection with the regularization of status proposal, I would also note that it would serve not only our own interests but would diminish the concerns expressed by Mexico and other countries respecting the circumstances of their nationals in the United States.

I shall defer to the views of the agencies more directly affected by many of the issues covered in this proposed legislation, and address primarily those items of special interest to the Department of State in the substantive sense.

We appreciate the General Validity of the "user fee" concept. However, the Department has grave foreign relations and other reservations about the imposition of such fees at U.S. land border ports of entry. The mere imposition of such fees would itself almost certainly appear to Mexico and Canada as inconsistent with the spirit of cross-border cooperation which the President has emphasized. This reaction, based on a matter of principle, would at a minimum be another irritant in bilateral relations and could lead to reciprocal action.

In addition to these foreign relations concerns, we are disturbed by the essential impracticality of this proposal. We are all very aware of the traffic tie-ups that already exist at such ports. There would be a quantum jump in those delays if fees had to be assessed on a per capita basis. It is obvious that a simple unmanned toll-booth operation would not suffice, not only because of fluctuating exchange rates in both neighboring countries but more particularly because such a system could account only for the vehicle and not for the number of passengers, let alone their nationality. I would note, however, that we prefer this bill's provision, which is not mandatory and seems more fair, to that in the Senate immigration bill.

We welcome the consensus on the need for special asylum officers but are seriously concerned that this bill does not incorporate a consultative role for the Department of State. We believe that State's expertise on foreign aspects bearing on asylum questions is essential to their proper adjudication. It is because the current statute does not make this clear that we prefer a legislative mandate for consultation to the current reliance on the Service's regulations which lack such a specific basis. We would prefer that the legislation provide that the Secretary of State make available to the Attorney General reports on the condition of human rights in all countries, and that the asylum adjudication officer should use such reports as general guidelines in making the asylum determination. We would also prefer that the legislation provide that the Secretary of State may submit comments on individual applications to the asylum adjudicator.

We regret also that portion of the asylum provisions which calls for open hearings but permits closed hearings upon the request of the applicant. At best, we find it inconsistent with the recognition in section 124(c) of the need to protect documents associated with asylum hearings, and have some difficulty understanding how documents used at an open hearing can be kept "confidential".

More important, we believe it is essential in the interest of the claimant, as well as of any family members or members of the same group still in the country from which the applicant has fled, that all materials bearing on the matter—especially those that the claimant presents—be confidential. Many unsophisticated asylum claimants will not realize in advance that they have the right to a closed hearing nor an awareness of the importance to others that the matter be treated on a confidential basis. By contrast, however, it seems certain that those who believe that publicity is a prerequisite to just treatment will instinctively seek an open hearing. We would urge, therefore, that this provision be amended to establish a closed hearing except at the expressed desire of the applicant.

With regard to the students provision, we find little merit in dropping the distinction between private students and sponsored exchange visitors and have to wonder whether foreign governments will not also be confused by this blurring of purpose. We would also note a probably unintentional inequity—certainly in contrast to our usual emphasis on family unification—in the waiver provision, which would make it



possible for spouses of citizens and certain persons needed by industry to acquire resident status without first residing abroad for 2 years but would withhold that opportunity from the spouses of resident aliens.

We have no objection to the proposal to benefit certain children and surviving spouses of international civil servants who have long resided in the United States.

Finally, and of particular importance to State, is the nonimmigrant visa waiver provision. We believe that a waiver under the broader terms we originally proposed would prove to be effectively manageable. However, believing also that, if the programs were initially limited as proposed in this bill, the Congress would, in fact, extend and expand it, we are prepared to accept the concept of a pilot program, limited in both duration and the number of countries. Not surprisingly, we would prefer the larger number (eight) that is in S. 529 to the five provided in this legislative proposal.

The modified criteria proposed for inclusion of a country in the program are, however, deeply troubling. They enlarge substantially the bases for exclusion from the list and, at the same time, they cut the percentage of incidence of those factors that would be permissible. This would preclude meeting the objectives of the provision—that is, to extend reciprocity to our closest allies who have waived visas for U.S. visitors for many years and to eliminate unnecessary processing of visas at our major posts. Some major countries would not qualify under this revision of standards.

We are particularly disturbed by the failure to use a 2-year average as the indicator. There are economic and political events that skew data from 1 year to the next for reasons not bearing on whether a country's nationals are good nonimmigrant risks. Use of only the prior year's data quite probably would result in such aberrations as a country not being found eligible for the program which should be or, worse, being found eligible when it should not be.

We recognize that some of the proposals about which we have expressed reservations are predicated on philosophic issues on which honorable men can honestly differ. We believe, however, that some may be essentially technical or drafting matters and would be pleased to work with the committee members and staff to develop modifications that would be mutually satisfactory.

Mr. MAZZOLI. Mr. Ambassador, many thanks for your statement, and I do appreciate all the work that you have done personally and that your Department has done over the last 2 years that I have had contact with the subject area. You have been indefatigable in promoting appropriate and proper changes in the Nation's immigration laws in order to do justice.

And I understand that you might be a little bit reticent to talk about visa waivers—but let me forge ahead anyway.

If you had a 2-year average refusal rate rather than 1-year rate, would that help a little bit?

Secretary ASENCIO. Yes, very definitely.

Mr. MAZZOLI. Even if you kept the same criteria.

Secretary ASENCIO. If you kept the same criteria, I would still be in trouble.

Mr. MAZZOLI. There are two of them. If I understand, one is the denial at the visa office and one is denial at the entry.

Secretary ASENCIO. Yes, exclusions.

Mr. MAZZOLI. And of the two of them, I guess the exclusion is more of a trouble?

Secretary ASENCIO. Exclusions and withdrawals, actually, both complicate our existence. What I'm afraid of is I'm not sure many nations in the world on the basis of that criteria would be eligible for this provision.

Mr. MAZZOLI. Can you give us any data on that? Because if we have a visa waiver, then we want it to work. We did have discussions with your consular officers in Rome on the whole question of the workability of this thing. So we do not want this to be an alleged system which is a nonsystem. Any data you could provide



which would detail that many nations of the world who now afford our citizens a right to travel without visas which would maybe fail to qualify under this bill, that would be helpful.

Secretary ASENCIO. I'll be happy to do that, Mr. Chairman, but ultimately it will really be a subjective judgment in the sense that a 2-percent refusal rate strikes us as a minimal requirement.

Mr. MAZZOLI. Is that what was in the original bill?

Secretary ASENCIO. That's correct.

Mr. MAZZOLI. And that's the percentage that's here now?

Secretary ASENCIO. Well, it's 2 percent, but with these additional criteria.

Mr. MAZZOLI. Let me switch quickly with the little time I have remaining and ask you about one of the consistent refrains, the GAO study that suggested, according to our critics, that employer sanctions could not work.

Now, I have looked at the study and read it pretty carefully, and I think it says it does not work if you do not want it to work.

I wonder if you have some ideas, having traveled and worked in some of the nations where they have this system of employer sanctions.

Secretary ASENCIO. I read the study, of course, when it first came out, I read it a couple of weeks ago, and I read it again last night.

Mr. MAZZOLI. Just thinking that I might ask about it.

Secretary ASENCIO. Exactly. Well, actually I consider it key to the proposals because, obviously, if one could make the judgment that employer sanctions are not going to work, so therefore why try, all the work we have done in this regard goes for naught; what we have done is meaningless.

I'm not sure that one can arrive at that conclusion from the report. For instance, I think if one goes beyond the overview, the impression that in all nations where this was examined sanctions are not working is not correct. There are a number of nations where the employer sanctions are working very well. And there are other nations detailed where sanctions programs are not essential because the enforcement capability is working so well. So you have that kind of mix.

So I think you are perfectly right, Mr. Chairman, in the sense that if you don't want it to work, obviously it is not going to work. If you are intent on making it work, it will work, and there is evidence in the report to that.

And, of course, there are some other, I think, items in the report that would require further analysis also.

Mr. MAZZOLI. Well, if you have a chance, Mr. Ambassador, any fairly brief observations on what you have found, will help us very much.

Secretary ASENCIO. Well, just very, very briefly, one of the things that struck me is that in absolute terms, certainly, and probably also in relative terms, the number of illegal aliens in the societies where sanctions programs presumably are not working is rather small, certainly not something to the extent of the problem we believe we are facing. And one could then make the argument that therefore if we could get our problem down to manageable proportions we wouldn't have to be as fierce in the application of this law as one would desire.

Mr. MAZZOLI. Very good. Thank you, Mr. Ambassador.  
The gentleman from Texas.

Mr. HALL. Thank you, Mr. Ambassador. I want to ask you a question on the bottom of page 2 and the top of page 3. It says:

We welcome the consensus on the need for special asylum officers but are seriously concerned that this bill does not incorporate a consultative role for the Department of State.

Would you explain what you mean by that, please, sir?

Secretary ASENCIO. I think that because of our foreign relations expertise, because we are in the business of participating in overseeing relations with other countries, we have a knowledge about conditions in those countries which I think is pertinent to the adjudicative process in these cases. And I think that this is not a determination where the Department of State should be excluded but one where this particular knowledge is recognized and made part of the data that are available to the Attorney General.

Mr. HALL. Well, are you speaking of people who may be on the beaches, when a person comes in a boat and lands, that initial conversation?

Secretary ASENCIO. Asylum cases by definition are people who are actually here in the country. What I am talking about is where those people make a claim to political persecution or make a request for asylum, there is a process by which one determines whether in fact the conditions in the country they are coming from are such that would make that a valid request.

Mr. HALL. Well, do you think that an agent of the INS should have the exclusive authority to make that determination on the beach in a first conversation with that person who may be coming into this country?

Secretary ASENCIO. Well, I think he has an absolute duty to ask, certainly, why that person was coming. And if there is no indication that the person is fleeing from persecution or the other recognized conditions in these cases, then he can make a preliminary determination.

Mr. HALL. You say "preliminary." Do you think that after he makes that determination the Department of State should be called in to make another determination as to whether or not that agent was right or wrong in making that determination initially?

Secretary ASENCIO. No; what I'm saying, Mr. Hall, is that if the alien says that he in fact is a political refugee, that he in fact is fleeing from persecution in his home country, when the INS officer passes that piece of information on to his superiors, "We have here an alien who says that he indeed is fleeing from political persecution," the Attorney General should have an opinion from the Department of State as to whether the conditions in that country, the country the alien is fleeing from, would lead one to reasonably conclude that that persecution was possible.

Mr. HALL. Well, suppose a person comes in and says they are not fleeing because of persecution, they are not seeking political asylum.

Secretary ASENCIO. Then the Department of State is not involved.

Mr. HALL. All right. I thought you indicated that they should be involved regardless of what the person initially made as a determination.

Secretary ASENCIO. No; what I'm saying is this bill doesn't recognize any role at all for the State Department. I think it should.

Mr. HALL. All right. Thank you.

Mr. MAZZOLI. Let me use a few seconds of my friend's time from Texas.

Actually it doesn't specifically exclude State.

Secretary ASENCIO. That's right.

Mr. MAZZOLI. The bill is silent. And if the INS feels it needs guidance, it may consult.

Secretary ASENCIO. Well, I trust the INS implicitly.

Mr. MAZZOLI. Sure. But at least we have not gone so far as to carve you fellows out of the action.

My time has expired.

The gentleman from California. I apologize to the gentleman. Somehow, my sense of direction of left and right, but not philosophically, just in a directional sense, was askew. And the gentleman is really entitled to be called on first for questions.

Mr. LUNGREN. I appreciate that.

Secretary ASENCIO. May I say before he begins, Mr. Lungren, I was just in your district talking to some of your staffers selling immigration policy and had a very good time with them.

Mr. MAZZOLI. It speaks very well of the gentleman, I am sure.

Mr. LUNGREN. I think you are the first person who has said you have implicitly full confidence in the INS. We don't. But we have had a tremendous variety of testimony here.

The first thing I would like to do is to clear up the rumor I have heard. Having seen you here now for several years in this process, I understand that you have vowed not to trim your beard until we get this bill through; is that correct?

[Laughter.]

Secretary ASENCIO. You think I'm in trouble, do you?

Mr. LUNGREN. I don't know.

Secretary ASENCIO. I would say I think we came very close in the last session. I am convinced that we had the votes, and that we just ran out of time. I'm hoping that is still the case.

Mr. LUNGREN. We are doing our best to help you.

There are two things I'd like to talk about. One is to follow up on some of the questions that just took place with respect to the State Department giving general guidelines in terms of what the circumstances are in the country from which a prospective asylee has fled.

As I understand one of your concerns it is this, that if we don't explicitly state it in the law, the asylum adjudication officer would have no obligation to consider the position of the State Department, and in that fashion you might have a circumstance where an asylum adjudication officer in Los Angeles would rely on some voluntary organization for their general guidelines. The one in Chicago might take the State Department, the one in San Francisco might take somebody else's. And not with respect to the individuals fitting into that context but in terms of the general context itself. Is that correct?



Secretary ASENCIO. That is perhaps slightly beyond what I am saying. What I'm saying is that it would be better if that particular role is recognized in the law rather than not. In other words, the people who deal with these things would be happier if their specific participation in this process is recognized. And they are not saying that without it, it's not going to happen. They just would be more comfortable. And I think this is a reasonable position to take.

Mr. LUNGREN. It seems to me the State Department is given responsibility in this country for foreign policy and hopefully has the ability to make some judgments.

Secretary ASENCIO. Exactly.

Mr. LUNGREN. We ought to have a generalized policy that affects the adjudicatory process.

Secretary ASENCIO. Without recognizing it in the law?

Mr. LUNGREN. No, no. I think you ought to recognize it in the law. I'm taking your point. It's a point well made, one that I had not considered before.

The second thing I'd like to talk about is something you didn't touch on in your testimony, which is the idea of consultation between the United States and Mexico with respect to immigration policy. I have a shortened version of what I really want to get when we get on the floor. I'm trying to maneuver in that position. But does the United States have any feelings on that with respect to a formalized process of consultation between the United States and Mexico on immigration policy?

Secretary ASENCIO. Are we referring now to your proposal on temporary workers, or are you expanding this beyond?

Mr. LUNGREN. I do not believe it is limited in the bill just to temporary workers.

Mr. MAZZOLI. That was because of germaneness, but the gentleman's point from the start has been to try to make consultations a kind of generic activity throughout the whole questioning.

Mr. LUNGREN. With respect to immigration generally, but the only way I can get it in this bill without having this bill go to a number of different committees is to limit it to the H-2 program.

Secretary ASENCIO. The aspect of consultation gives me pause in the sense that I don't think that we can be put into the position of perhaps opening ourselves to accusations that we are writing immigration laws for the benefit of foreign countries. That is from our point of view.

From, for instance, the Mexican Government's point of view, they have been very scrupulous in not telling us specifically what they consider about various parts of our legislation. We have discussed aspects of our legislation with them. For instance, with the preceding Mexican Government, we went down and laid out very clearly before making our policy publicly known—we actually laid out the provisions of what we had in mind, and they were very careful not to express any value judgments. And I would consider that probably something we could anticipate in the future also.

I think obviously the idea of talking is always an important one, and I'm sure we will. But "consultations" has a more precise meaning in foreign affairs and diplomacy that involves more than just, "This is what we are going to do, Charlie, and what do you think?" It's a little bit more than that.

Mr. LUNGREN. My concern is that we, based on past experience, can't be guaranteed that in fact we will talk.

Secretary ASENCIO. You're thinking of the bracero program, of course.

Mr. LUNGREN. The bracero program and any number of things—when we have operations on the Mexican border. About 6 or 7 years ago we really beefed it up around Chula Vista, and for a several-month period we really caught a lot more people than we had before, and we've cut it down a little bit. No prior consultation with Mexico. Maybe some people feared a consultation at that time or something.

But it just seems to me if we are truly going to recognize this country as part of the solution to a problem that we have to recognize now exists, maybe a formalized requirement of whatever administration is in office is what is necessary. That's my concern.

Secretary ASENCIO. Let me put it this way. I cannot conceive of this administration doing something unilaterally that would affect Mexico in this area without talking to them about it.

I think the problem now is of such great importance to both nations that obviously it's something that has to be discussed.

Mr. LUNGREN. I recall having some discussion with Leonel Castillo when he was head of the INS in which he indicated his feeling that it was kind of difficult for us to go to Mexico and ask for their cooperation on the immigration program when all they had to do was look across the border and see we weren't taking it seriously. In other words, "You do our job while we're not doing it." And I think that's part of it. Now, when we are on the threshold of actually doing something, it seems to me, is the time when we can in good faith enter into discussions with our counterparts in Mexico and say that we are serious about it, "Can you get serious about it and can we work something out?"

Secretary ASENCIO. Can I convince you of discussions versus consultations?

Mr. LUNGREN. I'm not a diplomat; I'm a politician. But I do understand the difference in nuances and I'd be happy to change the language as long as we get done what has to be done.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida.

Mr. McCOLLUM. Thank you, Mr. Chairman.

I am very interested, Mr. Ambassador, in seeing to it that we get along with the process of asylum with due process and with a clear understanding of what the conditions are in the countries from which these people come and where they are likely to return. And I certainly agree with your assertion that we need to have State Department consultation at the very least on the issue of political persecution or the prospects of it. There are those who have suggested that the judges, under the bill that we are crafting now, or have crafted, be bound by State Department opinion with regard to the conditions in the country as to whether the person has a reasonable fear of political persecution.

Do you believe that that should be the case, that the judge doing the determining should be bound in some way—not just simply consult but be bound by the State Department's opinion?

Secretary ASENCIO. I'm not an attorney, Mr. McCollum, but it would strike me as being rather unusual for a judge to have to be bound by something emanating from the executive branch. It would seem to me to go to the heart of an independent judiciary.

It would seem to me, on the other hand, that obviously whatever evidence the Department of State provided would be an important element in whatever judgment a judge arrived at.

Mr. McCOLLUM. You believe what really needs to be done, then, is that there be some clear-cut indication in our legislation that at that stage when political persecution or the threat of it is raised and the person seeks asylum, the State Department's input is always obtained.

Secretary ASENCIO. Yes, absolutely. For instance, I was listening very intently to Mr. Fauntroy's testimony, and he made some remarks on the investigations of the Department of State in Haiti. And I was rather struck by the statement he made, and that is that we haven't found them all. But we found a goodly number. I think our record in that regard is rather well drawn. And we have not found any evidence of persecution of those who have returned.

I would think that that is an indication of the type of activity we could engage in, where obviously again it comes down to a more or less subjective judgment in the sense that if you haven't found them all you can't be absolutely certain that they have all been well treated. But you could at least get an indication. You can form an independent judgment based on the material that our vice consuls and consuls find in the field.

Mr. McCOLLUM. Isn't it true that right now in the process of someone claiming asylum that it takes about 6 months for the State Department to clear an individual, to give an opinion back to the Immigration officer?

Secretary ASENCIO. I know that we are heavily impacted at the Department of State in this particular area. That sounds like a reasonable figure to me, but I can't on my own hook confirm it.

Mr. McCOLLUM. Mr. Nelson is about to testify, and according to his testimony there are 86,000 of these pending and 2,800 a month are coming in. Isn't it true you have only about five or six people or so over there to work this problem in the State Department right now?

Secretary ASENCIO. That is correct.

Mr. McCOLLUM. How can we obtain or help you obtain getting some more people? Isn't that part of the problem?

Secretary ASENCIO. I'm sure our human rights people would like to see their budget expanded to take that into account.

Mr. McCOLLUM. Is there any effort going on currently internally to shift any personnel around on maybe a temporary basis, because this looks like a thing that we would like to believe will be for a couple of years a crisis, and after all of this goes into effect we can over a period of time gradually be reducing this.

So I'm asking: Is there any effort going on internally within the State Department to do something about this so we can supplement it, or is the entire burden, as you see it, on us to come up with additional funding and more manpower?



Secretary ASENCIO. I'm not specifically aware of any particular internal developments in this area, but I'd be happy to take that and give you a report on it.

Mr. McCOLLUM. I'd appreciate that very much.

Mr. MAZZOLI. Thank you very much. I would add to what the gentleman said that we just had a briefing last week from the Bureau of Human Rights and Humanitarian Affairs, and they indicate their turnaround time on these cases is now 1 to 3 months, and that they have no backlog there. They suggest it is in getting the cases down to the State Department that some of the backup occurs. So we will want to talk later on this morning about that point. But they do also say they could use some more resources.

The gentleman's time has expired.

The gentleman from New York is recognized.

Mr. FISH. Thank you, Mr. Chairman.

That also is my understanding, that we are current except for the Iranian asylum cases because they were held up in that process for such a long time.

One of the things, Mr. Ambassador, that makes it a pleasure to suit up again on this measure, being a little older and a little wiser, is to have you once again with us.

Secretary ASENCIO. My recollection is that you always ask the really difficult questions, Mr. Fish, as a result of your own previous incarnation on this side of the House.

Mr. FISH. No, no, I'm very supportive of what you said. Let me just ask the details of the consultative roles for the Department of State in your prepared testimony. Are the provisions in the Senate bill satisfactory to you?

Secretary ASENCIO. My recollection is that, yes, that is more to our liking.

Mr. FISH. I think your idea of a closed hearing except for an expressed desire of the applicant makes a lot of sense.

On visa waiver, do I understand what you like is a 2-year average with no more than 2.5 percent being reached in any one of those 2 years, without counting exclusion withdrawals, and eight countries instead of five?

Secretary ASENCIO. I'd love that.

Mr. FISH. I was just rereading an amendment I was going to offer last December when we never got a chance to.

Secretary ASENCIO. I will be eternally in your debt if you'd get that by.

Mr. FISH. Another amendment I'd like to get your view on which hasn't been touched on today. The bill before us provides that Government records relating to claims of persecution shall be confidential and exempt from disclosure. With the exception that discretion is vested in the Secretary of State and the Attorney General under certain circumstances to make these records available to the court, what would you think of an amendment that would also permit the Attorney General and the Secretary of State, at their discretion, to make such records available to the applicant? The applicant may be seeking asylum or refugee status. And I don't think it was ever the intention to bar government authorities from providing access to an applicant.

The literal reading, I think, of the Immigration and Nationality Act, section 222(f), would result in such a bar. Do you have a view as to whether or not we should change that or maybe clarify it?

Secretary ASENCIO. What I am concerned about here is not so much in the question of asylum cases. But we do have a number of exclusion actions where presumably, if this is established as a precedent, we would get into the unusual position, particularly on "28" cases, where in fact we are dealing with information from other agencies, and you get into a whole and very strange ball of wax as to whether those records should be made available.

Mr. FISH. But in the exclusion case, wouldn't the applicant be actually claiming asylum if we are talking about claims of persecution?

Secretary ASENCIO. What I'm saying is I wonder, if we do this in this particular case, whether it would not then weaken whatever argument we would have for straight applications, not necessarily asylum cases but people applying who are excludable under section 212(a)(28).

Mr. FISH. I'd appreciate it if you'd give this some thought.

SECRETARY ASENCIO. I shall.

Mr. FISH. Thank you.

Mr. MAZZOLI. Thank you very much.

And thank you, Mr. Ambassador. We appreciate your help and look forward to working with you.

And now we call forward the Commissioner of the Immigration Service, Mr. Nelson, and any colleagues of his who might be here.

Mr. Nelson, I guess for the record you might want to identify your colleagues.

**TESTIMONY OF HON. ALAN NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, ACCOMPANIED BY GERALD R. RISO, DEPUTY COMMISSIONER, AND JOSEPH SALGADO, ASSOCIATE COMMISSIONER, ENFORCEMENT**

Commissioner NELSON. Yes, Mr. Chairman. I am pleased to be here with you today, and I will apologize in advance for the state of my throat and voice.

I'd like to introduce the Deputy Commissioner, Gerald Riso, to my left; the Associate Commissioner for Enforcement, Joe Salgado, to my right.

In addition, let me introduce several other people who have been deeply involved in planning for the implementation of both employer sanctions and legalization: Ben Ferro, who is our District Director in Buffalo, basically heads up the unit. Doing the planning are Jack Shaw and Stan Davis. There are others, but those are the key ones I did want to mention and put in the record.

Mr. Chairman, I will review the prepared testimony. I will summarize it, read parts, and include references to implementation. Then Mr. Riso will proceed with the slide demonstration of our implementation planning. And after that we will be available for questions.

We certainly do appreciate the opportunity to be here and testify on H.R. 1510, the Immigration Reform and Control Act of 1983.

The Attorney General testified yesterday, and I would just like to supplement his testimony, and as I indicated we will be talking about some of the implementation plans that have been underway.

Certainly you and your committee have done a tremendous amount of work on this bill last Congress and early on in this Congress, and I want to commend you for the bill's prompt reintroduction, for moving the hearings and for the mutual commitment of the Congress and this Administration to bring this bill to early floor action and successful passage.

Certainly of the elements you have in your bill, the essential ones are: enhanced enforcement; the meeting of humanitarian concerns; legalization and other approaches; and the meeting of legitimate needs of employers in certain areas of temporary work.

We all are quite aware—as the recent U.S. News & World Report article illustrated—of the tremendous immigration issues we face in this country. It shows that we must have effective limits, that immigration must be a controlled process accomplished under provisions of the law, that employer sanctions is an essential element to eliminate one of the primary reasons why aliens enter this country, which is employment. The legalization provisions recognize the reality of the existing situation and present a humanitarian and realistic approach.

The estimates of numbers of illegals, of course, vary a great deal, but we are talking of 3.5 to 6 million, or very likely more, and the fact that illegal entries in ever increasing numbers erode confidence in our immigration laws. So it is essential that we have these reforms.

As noted, employer sanctions are clearly the cornerstone of this legislation, without which we could not have any effective immigration reform bill. We must deal with the magnet of employment through the employer sanctions provision.

We think the thrust of the provisions are very sound. There are simplified forms to be filled out by the employer and by the employee. We think the provisions of the laws are well written to avoid some of the discrimination contentions that many people make.

If I could deviate for a moment, in the Senate the other day I made some pretty strong comments and I'd like to repeat those here today. A lot of the allegations of potential discrimination in employer sanctions, frankly, are being used by the people who really don't want a bill. We clearly now have the possibility and the actuality of discrimination in employment that exists under current law. If an employer does not want to hire an Hispanic, he could find a reason not to. The new bill would improve on that by adding the requirements of the forms and the processing, the good faith defenses, so that you would actually avoid some of the discrimination issues that may exist.

Father Hesburgh, who has testified before this committee, and recently again in the Senate, has clearly supported your bill and the fact that it will not create these discriminatory effects.

I think we all need to recognize the reality that the real discrimination problem is against those American citizens, and permanent residents, particularly many of Hispanic or black origins who are deprived of jobs by reason of illegals being hired for those jobs.



That is the issue we must focus on and not the smokescreen of the allegations of discrimination in employer sanctions.

We do have a number of recommendations regarding employer sanctions. The Attorney General alluded to these. I think we can all learn, as we go through the process, that there are what I call fine-tuning type of recommendations.

Regarding criminal fines, we believe they should be imposed only when an injunction against repeat offenses has been violated, that the provisions for administrative and judicial review of employer sanctions be simplified by limiting both administrative and judicial appeal rights, consistent with due process, and also eliminating the requirement for a subsequent action to secure payment after a civil penalty has been imposed.

We look forward to working with you and the committee in these areas and others where we think some fine-tuning would improve the bill.

In the area of implementation of employer sanctions—again the slide show will come up and Mr. Riso will describe that in more detail—there are two basic objectives. We have testified to this before. We are absolutely convinced that the nature of the American public and our ethics are that there will, in fact, be very substantial voluntary compliance. We look forward to working closely with employers to insure that there is maximum voluntary compliance to meet their needs and to meet the Government's needs. That is truly the first focus of our planning on employer sanctions.

The other would be to carefully target our enforcement actions to have maximum impact. Like the Internal Revenue Service or any other organization, you are not going to catch all the violators. By targeting the major violators, we think we can be very effective.

In the planning aspect for employer sanctions, we have set forth the development of policies and procedures for effective enforcement by INS; second, we are in the process again of identifying and addressing the needs of employers; third, coordinating efforts with other Federal agencies—Department of Labor, Department of Health and Human Services, and others, identifying and allocating appropriate resources for this function.

The implementation plan for employer sanctions has four phases: First, an extensive public information program; second, developing an enforcement strategy that I alluded to; third, the training of personnel; and fourth, enforcing employer sanctions throughout the United States to achieve the highest impact.

I will defer additional comments to the slide show and also to questions that will come up.

In the area of legalization, clearly the dates in the bill, 1977 and 1980 dates, we think are solid and should be adhered to. The standards for eligibility sometimes have not been identified. But clearly, those who would have felony convictions or three or more misdemeanor convictions would not be eligible for legalization. Additionally, as provided in existing provisions of the law, those who would likely be public charges would be excluded from legalization.

I think those issues can go a long way—and I will speak later about some of the cost issues—to alleviate some of the concerns of State and local governments.

Your bill, of course, has provisions in that regard on the reimbursement of the State and local governments. The Attorney General did state yesterday—and I would repeat—that we recognize this is a difficult area and a balancing between whose purse is utilized and to what degree. But we do think the administration's approach to the block grant is the more effective one. We do oppose the exception to the Federal benefit ineligibility, and we strongly oppose the provision authorizing full reimbursement for State and local cash and medical assistance.

These two provisions of H.R. 1510 would generate estimated costs of \$4 billion between 1984 and 1987 compared to the \$1.7 billion estimated for the Senate bill. At a time of very significant budget austerity, these added costs must be considered and cannot be justified.

The policy for full Federal reimbursement does not provide incentives for cost control, another important factor. The administration also opposes the authorization of Federal support for educational assistance on behalf of legalized aliens.

As noted, the administration does support the inclusion of a block grant program to assist States and localities in providing medical care or other welfare services to newly legalized residents. This appropriately reflects shared Federal, State, and local responsibilities for increases in social welfare costs as may occur with the legalization of these aliens.

An important aspect, we believe, in the eligibility is the provision that the applicant must provide evidence of past and current employment in order to overcome the public charge group of inadmissibility. Documentation in this and other areas will be screened for fraud. In addition, we will be working with State and local governments so that we are apprised when legalized aliens file for State and local assistance. While some temporary recourse to social welfare benefits may be warranted, temporary residents must again overcome the public charge ground to adjust to permanent residency.

Again in the implementation area, we are undergoing at INS a very substantial planning under Mr. Riso's direction. Over the last 6 months, we think we have done a great deal. It is a difficult task with many, many issues and uncertainties, but we are confident that we can effectively implement the legalization provision. There will, of course, be a great number to be legalized within a short period of time. But the basic goals, that I know you share, Mr. Chairman, is that the legalization program, the short time frame, one-time program, not disrupt the normal business of INS.

There also must be a simple nonthreatening method for the aliens to obtain information concerning their eligibility and to file the applications. The applications must be processed to completion as quickly as possible. And finally, we must be sure that only eligible aliens receive such benefits.

We are going forward, as noted, with implementation plans. Again, a great emphasis on a public information program is a key element of that.

Working closely with voluntary agencies and other public or private organizations to develop means to provide information, forms, and assistance to the aliens is an important element.

Another element is that the Immigration employees will be available to review the applications and to conduct the appropriate interviews.

And a key point on which we are moving forward, is a great use of automation—an automated processing center to process what could be several million legalization claims.

Clearly, under the public information program, the emphasis is to reach all the illegal aliens who do qualify, and to use the voluntary and other nongovernmental agencies for that purpose, to be sure also there will be no risk to aliens who appear for the early processing stages.

Again, I will pass the other pieces of testimony on that because I think it will be covered during the slide presentation.

I will allude to several recommendations on the legalization, again, Mr. Chairman, in the fine-tuning type of approach, that we think can make it more workable.

One is what we would call the 3 plus 12 plan; that after enactment, the first 3 months should be the formal implementation planning period with no applications to be filed before that time, to allow us to get all the procedures in place, with the first application to be filed 90 days afterwards. And then we recommend a 12-month period for these legalization applications.

We would agree with your bill and your approach to protect the prima facie eligible aliens from deportation or exclusion during the first 3 months after enactment.

The area of temporary foreign workers is of course, a difficult area for everyone. We have the balancing of protecting the domestic workers and at the same time providing legal means for the entry of temporary foreign workers in certain areas where needs can't be met by existing American workers.

I think the word "transition" is key here, and we would hope in the process with your committee and the administration that we can work closely with growers and organized labor, with the Departments of Labor and Agriculture, to forge out a meaningful transition approach in this area. It is important that we accomplish that.

The previous testimony of the other witnesses has addressed the exclusion and asylum issues. I will make a few comments on that.

I think it might help—and I will read this part of the testimony on page 16—to explain the procedures using the present exclusion cases, which also would be followed under the provisions in the bill for summary exclusion cases.

When an inspector finds someone excludable, he does not act independently. His determination results in the person being referred to a secondary inspector, who then reviews the case. The decision to exclude, if upheld, is still reviewed by the supervisory inspector on duty, before the individual is held for an exclusion hearing or before the individual would be summarily excluded. During this process an individual who lacks documentation but claims citizenship or permanent resident status would not be held incommunicado but would be allowed to contact people who could substantiate his or her claim. Only if this effort produced no supportable claim to citizenship or permanent residence would the individual be summarily excluded.



As explained in the bill report on H.R. 6514, if a person merely claimed citizenship, this would be sufficient to allow a redetermination hearing. This automatic hearing reverses any time-saving that might have been garnered through the summary procedure. We feel that summary exclusion has worked very well with stowaways and crewmen, who do have an opportunity to claim asylum without being summarily excluded. And if a determination cannot be made before a ship sails, they are paroled into the country until a final determination can be made.

So we think provisions have worked in those areas, and there is a solid basis, legally and morally, for that kind of procedure.

With regard to the Immigration Board, following the Attorney General's comments, we would certainly ask the committee to consider several changes we think are appropriate.

There should not be the statutory limit of 70 immigration judges. That ties us into a number. It lacks flexibility. So there should not be a specific number in the bill.

Likewise, the jurisdiction of the Immigration Board should be capable of expansion by regulations of the Attorney General.

Another point is that the withholding of the deportation provisions of section 234 of the act be repealed to eliminate confusion over a parallel asylum proceeding.

The asylum procedures, of which Mr. McCollum and others are all aware, are difficult. We all want due process and we are all committed to that. But I think sometimes we are so concerned with meeting all the steps that we create more of a problem for the applicant, as you mentioned, Mr. Chairman, as well as for the American public. The quantum leap in numbers has been huge, as indicated, 86,000 current asylum applications. Those are exclusive of the Cuban and Haitian boat arrivals, and that's another 30,000 to 40,000. And we are receiving, as indicated, 2,800 asylum applications a month. We are processing more cases today, twice as many as year ago, but we are still falling behind, so that it's essential that we upgrade and make more efficient the system.

We think some of the provisions regarding a new form of notice of intention to apply for asylum is additional paperwork and is unnecessary and can be incorporated into the asylum application form.

I will pass on the other provisions

So, in conclusion, I appreciate the opportunity to be before you, to work with you and your committee. I am confident, as stated by other witnesses, that we can get a bill, and we will do all we can to accomplish that.

I think all the interest groups, governmental and nongovernmental, have that same thrust. We must have reform legislation and I'm convinced we can work effectively together.

Mr. MAZZOLI. Thank you very much, Mr. Commissioner.

[The complete statement follows:]

STATEMENT BY ALAN C. NELSON, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE

Chairman Mazzoli and Members of the Subcommittee, I am pleased to be here and to have an opportunity to testify on H.R. 1510, the Immigration Reform and Control Act of 1983. Yesterday the Attorney General appeared before you to testify

in support of this important legislation and I will supplement his comments and provide specifics on the implementation plans developed by the Immigration and Naturalization Service (INS).

It has been almost one year since I appeared before you to express the strong support of the Immigration and Naturalization Service for the Immigration Reform and Control Act of 1982. H.R. 1510, which represents a tremendous amount of work by you, your subcommittee, the full House Judiciary Committee, and many others, seeks a well balanced approach to the multiple immigration problems that we face in this country. It has the necessary elements of authority for enhanced enforcement of the law, humanitarian concern for aliens who have established strong equities in the United States, and provisions whereby the legitimate needs of employers may be met. It has the added advantage of providing a more efficient, workable law which can be implemented fairly.

The conditions which have led to our present problems in immigration are neither new nor unusual. The United States has for many years presented an attractive lure to people from many parts of the world. The individual freedoms of its residents and the opportunities that are available has encouraged immigration since the very beginning of our country. Because of this, we have developed as a nation of many immigrants.

We must recognize, however, that there are limits to the number of immigrants which the country can reasonably accommodate. Most of all, immigration must be a controlled process accomplished under the provisions of law. The Immigration Reform and Control Act of 1983 recognizes this fact. By placing sanctions on hiring, the bill would eliminate one of the primary reasons aliens enter illegally—employment. By providing for the legalization of aliens who have been productive members of our society for several years, the bill recognizes the reality of this situation and presents a humanitarian and realistic approach. The bill also recognizes the need that some employers may have for legal short-term foreign workers in agriculture or other industries and it provides the means by which workers may be allowed to enter our country. Now I would now like to comment on the specific provisions of H.R. 1510.

#### ILLEGAL IMMIGRATION

Although the actual number of illegal aliens is unknown, it is believed that there are from 3.5 to 6 million illegal aliens in the United States. The presence of large numbers of illegal aliens in the United States and the continuing entry of others is an unacceptable situation. It has eroded confidence in our immigration laws. Immigration must be controlled and an orderly process must be implemented which protects the best interests of our nation.

#### EMPLOYER SANCTIONS

A cornerstone of the bill in the employer sanctions. The employer sanctions would be imposed on individuals who knowingly hire aliens who are unauthorized to work in the United States. As I have stated before, the most compelling reason for illegal immigration is employment. We feel that this provision is absolutely essential if we are to gain control of our borders. Only through this means can we remove the magnet which attracts so many illegal aliens to our country.

H.R. 1510 requires that a person who hires, recruits, or refers an individual for employment must complete a form for each potential employee and attest, under penalty of perjury, that the person's right to be employed has been determined through the examination of documents which identify the individual and show that he or she is eligible to be employed in the United States. An individual who seeks employment in the United States must complete a form and attest under penalty of perjury that he or she is a United States citizen, or an alien who has been admitted for lawful permanent residence, or an alien who has been authorized for employment.

The Administration believes that these provisions are appropriate as a means of controlling illegal immigration to the United States while safeguarding civil rights. Equality of employment opportunity for United States citizens and lawful permanent residency is not diminished by this bill. The recordkeeping requirements are balanced by the need to deter illegal immigration. As the Attorney General said yesterday we do have some recommendations to improve this vital section of the legislation. Specifically, we recommend that the prohibition on recruiting and referring aliens be deleted; that adequate civil penalties be imposed, but that criminal fines or prison terms be imposed by a court only when an injunction against repeat offenses has been violated; and that the provisions for administrative and judicial



review of employer sanctions be simplified by limiting both administrative and judicial appeal rights, consistent with due process, and eliminating the requirement for a subsequent action to secure payment after a civil penalty has been imposed.

We look forward to working with you in your crafting of these recommendations.

#### IMPLEMENTATION OF EMPLOYER SANCTIONS

If H.R. 1510 is enacted, the Immigration and Naturalization Service will approach its task of enforcing employer sanctions with two objectives. First, we believe that it is our responsibility to encourage employers to voluntarily comply with the law. Second, we try to carefully target enforcement actions so maximum impact is assured. Extensive planning, that began when the Administration's omnibus immigration bill was introduced in 1981, has resulted in an assignment of the following responsibilities:

1. Articulate policies and procedures for effective enforcement by INS personnel.
2. Identify and address the needs of employers.
3. Coordinate efforts with other Federal agencies.
4. Identify, obtain and allocate resources which are needed for an effective combination of enforcement actions and compliance checks.

The implementation plan of the INS contains four phases:

1. Engage in an extensive public information program to acquaint employers and the public with the requirements.
2. Develop an enforcement strategy to achieve maximum effect.
3. Train personnel in the policies and procedures.
4. Enforce employer sanctions throughout the United States to achieve the highest impact.

I will discuss each of these phases in more detail.

#### *1. Public information*

An extensive program has been developed to provide information about employer sanctions to employers, business, labor organizations and the public. The information will explain to employers how to comply with the law, and stress what is expected from employers to make a good faith effort to verify the eligibility of individuals seeking employment.

Instructions will be available from a number of sources. All employers will be mailed a detailed description of procedures to be followed. The media will be used for press releases, prepared announcements, and appearances by INS officials. Brochures will be distributed at INS offices, and our telephone information system will provide taped responses to inquiries about employer sanctions. Draft regulations have also been prepared which define implementation procedures.

#### *2. Enforcement strategy*

The INS has determined that employer sanctions will be enforced within the present organizational structure of the agency. A broad strategy has been developed to identify enforcement targets to achieve the greatest impact. Operations will be based on historical data compiled against habitual employers of illegal aliens, and on profiles of industries which are known to attract illegal aliens. In addition INS and the Department of Labor will cooperate to assure that compliance audits are made on a representative sample of all businesses.

The INS has also made commitments to work with the Department of Labor and the Social Security Administration, in joint efforts to locate unauthorized aliens who are employed in the United States.

#### *3. Training*

Both INS personnel and Department of Labor compliance officers will perform employer sanctions investigations. The Service has developed training plans and materials designed to make officers aware of the requirements imposed on employers, the authority of officers under the employer sanctions provisions, the evidentiary requirements for prosecution, and the means to protect applicants from discrimination in the hiring process.

#### *4. Enforcing employer sanctions*

During the initial period of education following enactment, the INS will notify employers who are found in violation of the law and advise them of its provisions. Thereafter the INS will formally warn employers found to be in violation of the law. When it is determined that an employer has committed a violation subsequent to an initial warning or citation, the INS will issue a notice of intent to fine. Hearing pro-



cedures have been outlined and the INS plans to utilize automated data processing techniques to facilitate effective enforcement. The INS is developing guidelines for employers which should assist the verification of employment eligibility and reduce the likelihood of unlawful discrimination. Finally, the INS has identified procedures to monitor the enforcement of employer sanctions and is developing standards to measure productivity and the effectiveness of the program.

#### LEGALIZATION

The provisions of H.R. 1510 which allow the legalization of specified aliens who are in the United States illegally are a realistic and humane response.

The bill will allow permanent residence to be granted to aliens who have been in the United States illegally since January 1, 1977. Temporary residence may be granted to aliens who have been here illegally since January 1, 1980, and to Cubans and Haitians who have been in the United States on or after specified dates and are known to the Immigration Service. Aliens who initially qualify for temporary residence may apply after three years to have their status changed to permanent resident if they continue to reside in the United States and remain eligible under the other provisions of law.

Aliens who do not meet the standards for admission to the United States would not qualify for permanent or temporary residence. This includes aliens who have been convicted for any felony or three or more misdemeanors committed in the United States and aliens who have assisted in the persecution of any person or account of race, religion, nationality, membership in a particular social group, or political opinion. Similarly, aliens who are not able to overcome the "public charge" exclusion of the Act will not be eligible for legalization.

#### BENEFITS TO PERMANENT AND TEMPORARY RESIDENTS

Aliens granted permanent residence under this provision will not be eligible for three years for financial assistance furnished under Federal law. Those granted temporary residence will also be ineligible for assistance during the period of temporary residence and three years after they are adjusted to permanent resident status. Persons requiring assistance because of age, blindness, or disability, and those requiring medical assistance because of serious illness or injury or in the interest of public health would be exempted from this ineligibility. The legislation also authorizes 100 percent reimbursement to States for the costs of public assistance provided to eligible legalized aliens as well as payments to state educational agencies to assist in providing educational services to eligible legalized aliens.

As the Attorney General stated yesterday, the Administration opposes the exception to federal benefit ineligibility. We are strongly opposed to the provision authorizing full reimbursement for state and local cash and medical assistance to legalized aliens. Those two provisions would generate estimated costs of \$4 billion between 1984 and 1987 compared to the \$1.7 billion estimated for the Senate bill. At a time when the Nation requires budget austerity, such extraordinary added costs cannot be justified. Further, a policy for full federal reimbursement does not provide incentives for cost control. The Administration also opposes authorization of federal support for educational assistance on behalf of legalized aliens.

The Administration supports the inclusion of a block grant program to assist states and localities in providing medical care or other welfare services to newly legalized residents. This appropriately reflects shared federal, state, and local responsibilities for increases in social welfare costs as may occur with the legalization of these aliens.

Our legalization implementation plans make it explicit that qualifying illegal aliens must provide evidence of past and current employment in order to overcome the public charge ground of inadmissibility. Documentation in this and other areas will be screened for fraud. In addition we will be working with state and local governments so that we are apprised when legalized aliens file for state and local assistance. While some temporary recourse to social welfare benefits may be warranted, temporary residents must again overcome the public charge ground to adjust to permanent residency.

#### IMPLEMENTATION OF LEGALIZATION

The proposed legislation provides that aliens who believe they qualify for legalization may apply for this benefit during a 12-month period beginning October 1, 1983. It further provides that arrangements may be made with qualified voluntary agen-

cies for the purpose of making the provisions of law known to the public and for the receiving of applications for legalization.

Assuming that this legislation is enacted, the INS will be responsible for legalizing a great number of aliens in a short period of time. Extensive planning has been done since the Administration's Omnibus Immigration Bill was introduced in 1981. Our planning has been based on a number of goals. We believe that the program should not disrupt the normal business of the INS. The program should provide a simple, non-threatening method for aliens to obtain information concerning their eligibility and to file applications. Applications should be processed to completion as quickly as possible. Finally, we work to ensure that the procedures guarantee that only eligible aliens receive benefits under the law.

A comprehensive implementation plan has already been developed that incorporates these principles. We are confident that the legalization program contemplated by H.R. 1510 can be fairly and efficiently administered.

The implementation plan of the INS contains four basic components or phases:

1. An extensive public information program to acquaint the public with the benefits available under the law and the means by which the benefits may be applied for.

2. Facilities will be set up in all parts of the nation, with the cooperation of voluntary agencies and other public or private organizations, to provide information, forms, and assistance to aliens who wish to know whether they qualify for legalization and to file applications.

3. Immigration and Naturalization Service employees will be available to review applications for legalization and to conduct interviews of the applicants if necessary.

4. An automated processing center will be developed to complete the processing of applications received from the nationwide facilities established around the nation.

I will discuss each of these components.

### *1. Public information*

An extensive public awareness program has been developed to provide information concerning the legalization benefits which will be available under the law. The information will stress that the government wishes to reach all illegal aliens who qualify under the law and that a means will be provided through non-governmental agencies, for aliens to obtain specific information concerning their eligibility. The information will further stress that there will be no risk to aliens who appear at the agency facilities seeking information and no enforcement activity will take place in or around the facilities.

In order to reach the maximum population, the media will be used to disseminate information as soon as the law becomes effective. This will include press releases, prepared announcements for radio and television, and appearances by INS officials on radio and television stations and networks.

Brochures will be printed and made available at all INS offices, community organizations, and in other public places for illegal aliens to obtain.

Notices will be printed and posted in public facilities.

A telephone system will be installed at INS offices to provide taped responses to inquiries concerning legalization.

### *2. Organizational structure to provide information, forms, and assistance to legalization applicants*

Agreements will be made with voluntary agencies and other public and private organizations to provide facilities and personnel to advise aliens concerning their eligibility for legalization to provide them with the necessary application forms, and to assist them in preparing and submitting their applications. The facilities will be operational no later than 90 days following enactment. The number and location of the facilities will be determined based on an estimate of the distribution of the illegal alien population.

The personnel of the cooperating organizations will be trained by the INS concerning the general and technical provisions of the law. Continued technical and management assistance by INS personnel will be provided to the organizations throughout the program. A separate INS management and technical assistance structure will be established to assist the cooperating organizations and to carry out the other phases of the program.

### *3. INS field operational structure*

INS personnel will be made available at the cooperating organization facilities or at INS facilities for the purpose of receiving applications. These employees will assist the organizations in any way possible and will review applications for legal-



ization received at the facilities. When necessary, individual applicants will be interviewed by these employees.

Following review of the applications by INS personnel and interviews if necessary, a preliminary determination of approval or denial will be made and the applications will be forwarded to a processing center for all subsequent action.

The legalization program management structure will be designed to eliminate to the extent possible, the adverse impacts such a program would have on the existing INS structure. It will be separate from the existing program structure but will still maintain the interrelationship with existing programs necessary to maintain policy and operational consistency and efficiency.

#### 4. Central processing

A center will be established in an appropriate location to complete the processing of applications received from the various field facilities. The center will be automated and will perform most or all of the functions necessary to complete the application process. These functions will include the required record search, creation, consolidation, and maintenance; performing the necessary security checks; preparing notices regarding the action taken in individual cases; and collecting and furnishing statistical and management reports. Upon the final processing of applications and a determination of eligibility by INS personnel, an identification card will be prepared and furnished to the applicants.

Although the legalization program will be unprecedented in its size and impact, the INS is confident that it can be carried out effectively. The program will encourage the maximum number of eligible aliens to come forward and at the same time insure that only those aliens who qualify are granted this extraordinary benefit.

### RECOMMENDATIONS

As the Attorney General testified, the Administration is in complete support of the premise behind the legalization provisions in H.R. 1510. We do have certain recommendations, however, which we feel will make those provisions more workable.

Rather than an application period which will begin on a specified date and run for 12 months, we recommend a 12-month application period to commence no sooner than three months after enactment. Such language would be flexible and would give INS time to publish regulations, enter into the necessary contractual arrangements, and begin the public information campaign.

We feel that it is important that the statute contain language which would protect *prima facie* eligible aliens from deportation or exclusion during the first three months after enactment.

### TEMPORARY FOREIGN WORKERS

The Administration supports the goals of H.R. 1510 which are to protect domestic workers from adverse impacts due to foreign labor and to provide a legal means for the entry of temporary foreign workers when a need is clearly shown that cannot be met by American workers. This will be extremely important if we are to have workable sanctions against the hiring of illegal aliens. This will help to avoid the harmful effects that shortfalls of domestic workers would have on some employers, particularly agricultural employers, during the transition period between the introduction of employer sanctions and development of new sources of American workers.

### UNLAWFUL TRANSPORTATION OF ALIENS

H.R. 1510 would amend Section 274 of the Immigration and Nationality Act to make it unlawful to bring an undocumented alien to the United States. This will resolve the problem created by the court decision in *U.S. v. Anaya*, et al., No. 80-231-CR-EPS, where persons who transported Cubans during the Mariel boatlift were found not to have violated Section 274.

### EXCLUSION OF UNDOCUMENTED ALIENS

Section 121 properly restricts the right to an exclusion hearing to documented aliens. Aliens lacking entry documents would be subject to summary exclusion by an immigration inspector, under proper supervisory control, similar to the existing procedures for crewmen and stowaways. There would be no judicial appeal in these cases, although individuals could ask for a redetermination hearing before an administrative law judge. However, an alien applying for asylum would be treated differently to assure that no one qualifying as a refugee would be returned before a determination of their claim was made.



We are grateful that during the mark-up of this section in the 97th Congress, the subcommittee amended this language to clarify the authority of the government to inspect all persons entering the United States, whether they were at a port of entry or not. However, the full Committee added a redetermination hearing before an administrative law judge, which has the potential of undercutting the summary exclusion procedure.

Let me explain the procedures used in present exclusion cases which would also be followed in summary exclusion cases. When an inspector finds someone summarily excludable, he does not act independently. His determination results in the person being referred to a secondary inspector, who reviews the case. The decision to exclude, if upheld, is still reviewed by the supervisory inspector on duty, before the individual is held for an exclusion hearing or before the individual would be summarily excluded. During this process an individual who lacks documentation but claims citizenship or permanent resident status would not be held incommunicado, but would be allowed to contact people who could substantiate his or her claim. Only if this effort produced no supportable claim to citizenship or permanent residency, would the individual be summarily excluded.

As explained in the bill report on H.R. 6514, if a person merely claimed citizenship this would be sufficient to allow a redetermination hearing. This automatic hearing reverses any time saving that might have been garnered through the summary procedure. Summary exclusion has worked well with stowaways who do have an opportunity to claim asylum, without being summarily excluded. If a determination cannot be made before a ship sails they are paroled into the country until a final decision is made.

#### U.S. IMMIGRATION BOARD

H.R. 1510 contains a section that creates a United States Immigration Board and establishes an immigration judge system. There is also a conforming provision which sets up a transitional period to effect changes in personnel and jurisdiction from the present Board of Immigration Appeals and the immigration judge system.

We recommend that the statutory limit of 70 immigration judges be removed, that the jurisdiction of the United States Immigration Board be capable of expansion by regulations of the Attorney General, and that the "withholding of deportation" provisions of section 243 of the Immigration and Nationality Act be repealed to eliminate confusion over a parallel asylum process.

#### ASYLUM PROCEDURES

It is not surprising that proposals dealing with asylum occupy a prominent part of your bill. It is an established fact that the present asylum system has been shown to be seriously defective. The defects that have come to light since the enactment of the Refugee Act are simply the result of a quantum leap in the numbers of persons who have applied for asylum. Today, there are approximately 86,000 asylum applications pending before the Immigration and Naturalization Service exclusive of those received from the Cuban and Haitian boat arrivals. New applications are filed at the rate of 2,800 per month.

H.R. 1510 provides that asylum cases may be considered only by administrative law judges who are specially designated by the United States Immigration Board as having been given special training in international relations and international law. The number of the judges who may be designated for this purpose is limited to 70. Appeals from adverse decisions could be made to the United States Immigration Board, and in the context of exclusion and deportation cases to circuit courts of appeals.

The bill also creates a new form of notice of intention to apply for asylum. We believe that this new notice is unnecessary, and can be incorporated into an asylum application form. The additional time to perfect an asylum application would be preferred to two separate forms.

#### LABOR CERTIFICATION

We recognize the inadequacies of the present labor certification system which has been criticized as being too slow and complicated. H.R. 1510 provides a streamlined alternative to the present individual certification process by allowing the Department of Labor to certify shortages or an over-supply of U.S. workers in certain occupations, using national job market data without reference to particular job openings. Presently, an employer is able to obtain labor certification only by advertising a specific job opening and being unable to fill that position with a U.S. worker. H.R.

1510 allows the Department of Labor to expand the existing "Schedule A" list of precertified occupations on a broad scale and to issue labor certification without reference to a specific job opening. Although a job offer is required before a labor certification may be issued, this currently may be waived in third preference cases by the Attorney General when he deems it to be in the national interest. We believe this should be continued, since full-time year-long job offers are not realistic for many artists and performers of exceptional merit.

#### OTHER PROVISIONS

##### *Students*

H.R. 1510 requires a foreign student in the United States to leave the country and reside in the country of his or her nationality or last foreign residence for two years before he or she could immigrate to the United States. This requirement could be waived in the case of students in certain fields of study if offered teaching, research, or technical positions and waiver applications were filed prior to September 30, 1989.

We believe these provisions are preferable to placing numerical limits on the waivers granted, which would require the INS to establish a complicated accounting and allocation system to control the number of waivers granted each year. It has been our experience that waiver provisions are not abused and that the absence of a numerical limit would not result in the granting of an excessive number of applications.

##### *G-4 special immigrants and nonimmigrant visa waiver*

H.R. 1510 addresses the problem of employees of international organizations and their dependents who often spend many years in the United States. It provides special benefits for some of these individuals. The bill provides for nonimmigrant waivers for visitors from some countries. We support this visa waiver program.

#### CONCLUSION

In conclusion, I want to express my appreciation to the chairman for the introduction of H.R. 1510 and the early hearing schedule. As Commissioner of the Immigration and Naturalization Service, I am particularly aware of the critical need for the reforms contained in this legislation. Those reforms provide both the vehicle and the opportunity to rededicate ourselves to the fair and firm enforcement of our immigration laws. The Immigration and Naturalization Service looks forward to working with you and all the members of the subcommittee in this endeavor.

Mr. MAZZOLI. Let me begin the questioning, and then we will go to Mr. Riso for the presentation, which is very important. I commented on the fact that you have done a lot of work in a 6-month period, which I think is an answer to the argument which is made that INS and the Government really do not want to enforce this bill anyway. In fact, there is a very stern effort under way to enforce the law.

Let me, Mr. Commissioner, bring up just a few things, and then maybe we can get on with some of the other questions.

One of the criticisms weighed against the bill constantly last year was that,

You are not going to get anywhere unless you improve enforcement at the border; you are not going to get anywhere unless you are willing actually to be very zealous about enforcing employer sanctions; you are not going to get anywhere with the legalization program unless you have people to process the paper and do the work; and, Ron, we don't see anything in your bill which indicates that you are serious or that the Administration is serious about this; there is no money; there are no people.

We might have the same kind of criticism this year, because there is nothing in the INS request for fiscal year 1984 that takes into consideration this bill.

Now, were we to take the bit in our teeth and decide we are going to put something in this bill right now, regardless of what



the Attorney General said yesterday, can you give me some idea of what you need, how much you would need—people and money—to do the good job of employer sanctions, legalization, enhanced enforcement at the border, and taking care of the asylum program? Do you have figures on it?

Commissioner NELSON. Well, we have been working on some figures, Mr. Chairman, but I don't know that we have any definitive figures for you now. But let me make a couple of general comments, if I might.

Certainly your thrust of putting money and positions in the bill is one vehicle to do it, no question about that. As the Attorney General testified yesterday, the administration is committed to enforcement of the immigration laws, that we are prepared and will be prepared to submit a supplemental for 1983, if it passes this year, or in a budget amendment for 1984. So I don't think there is any doubt that there will be money and resources advanced by the administration to meet the purposes of this bill, no matter how you best get there.

Certainly also, as you know, the third continuing resolution for fiscal 1982 did add substantial money for enhancing border enforcement, I think meeting the commitment of this administration. And there's \$30 million in the 1984 budget for data processing, communications, and a National Record Center, which likewise ties into the whole picture here. We must upgrade our operation and become modernized.

So I think we have put a lot of money into enhancing our operation. We will need more, no question about it.

I am really not in a position to give you specific figures because, as you know very well, we have to go through the Department of Justice. But I can assure you, I have personally been having a number of conversations with the Attorney General and others—and of course, you have met with him, and others have—that we have submitted a number of materials from INS to the Department of Justice. We are developing some cost and personnel options, and as we move down the stream we will certainly be pleased to share them with you.

Mr. MAZZOLI. Let me just try a few things on for size here, Mr. Commissioner. I think it is in some material that you sent us last year that suggested total Federal budget expenditures to implement the then H.R. 6514—this was for fiscal years 1983 through 1986. Using fiscal year 1983 as an example, had the bill been passed in the last Congress, you estimated \$76 million for the legalization program and \$25.5 million basically for employer sanctions.

If we were to put something approximating those figures in this bill, do you think that would enable you to operate your shop better, to do the kind of job we are looking for here?

Commissioner NELSON. I'm not such a diplomat as Ambassador Asencio is, but obviously resources are important. As I mentioned, the administration recognizes that, as you do. Any help we can get, of course, will be utilized.

Mr. MAZZOLI. Let me ask you this: When I was down at your shop the other day when we had our briefing, I think you said something to the general effect that you could process adequately



and deploy correctly 1,200 people a year. Was that the figure, or am I way off?

Commissioner NELSON. For what?

Mr. MAZZOLI. For your border patrol people, for enforcement.

Commissioner NELSON. We have roughly 2,200 border patrol personnel now.

Mr. MAZZOLI. Well, there was a figure that stuck in my head. I guess obviously it was not 1,200, but some figure of what you could train down at Glyco and deploy and take care of.

I am told there are 1,200 new people that you could absorb per year; is that correct?

Commissioner NELSON. Let me ask Mr. Salgado. Are you talking about border patrolmen now?

Mr. MAZZOLI. I'm talking about all people, but of course we are talking separate employer sanctions and legalization as a new responsibility. Now, I'm talking about all responsibilities, whether you put them at the border, investigations, inspections, all the things you do. In my head was 1,200 for people you could take in, train, and deploy per year. Is that correct?

Mr. SALGADO. I believe our conversation was directed toward the training of border patrolmen, and we felt, depending upon Glencoe's mandate, we could assimilate at least 300 to 400 new border patrolmen per year, and I don't believe I—

Mr. MAZZOLI. So you didn't talk in terms of the other one.

Mr. SALGADO. No; I did not.

Mr. MAZZOLI. Could you take 1,200 people in the space of 1 fiscal year—take a man or woman, train him or her, and deploy him or her in all your different activities?

Commissioner NELSON. That, of course, would be a 10-percent increase in our staffing. I think we do a pretty good job, as we did last year, in filling the vacancies, a concern you had. We did that. That's a big increase, but we have big responsibilities. So again, whatever the final budget figures come out, we will do that, of course.

Mr. MAZZOLI. As far as asylum, have you any preliminary figures on what that would require—the new change in adjudication?

Commissioner NELSON. I don't have those, Mr. Chairman. You're talking about asylum officers now?

Mr. MAZZOLI. Right.

Commissioner NELSON. I don't have those handy. As I say, of course, we hope the bill does not limit the number of judges. That would be an important thing. Some of this conversation you had with Ambassador Asencio early today.

If I can take off from that for a moment, internally we are looking now or are in the process of analyzing what we can do internally to better improve the asylum processing on our part, the State Department's part, and so forth, and we think that's important. And we are making some progress. There are a lot of issues.

Mr. MAZZOLI. Let me ask you this, Mr. Commissioner: You mentioned that if legalization were to take effect, if you have the 3 months plus 12 months arrangement, that people who are here and have a prima facie case would be entitled to stay and would be protected for those 3 months.

What constitutes a prima facie case? And beyond that, since that is certainly not subjective, is there any thought given to just not doing any internal interior enforcement—enforcing at the border and ports of entry, and so forth, but to just give the benefit of the doubt for that period of time as one guarantee to the detractors here who say,

“You just have a three-month period, and that’s going to give you an opportunity to grab everybody because you won’t have the forms and we won’t really be able to prove who we are or where we are.

Commissioner NELSON. Sometimes it’s a little hard to accept the critics, because I think they get a little fired up and assume the negative all the time.

I can just use this opportunity to say, in my year and a half here, I’m very proud of the Immigration Service and the people who do the job under a lot of pressures, while in any organization of 10,000 people you have some bad apples. Yet, overall they do a fine job. So I think to impugn any motives and so forth is a mistake that some people make.

Now, as to whether we would defer any kind of activity during this period, I think that might be going too far, Mr. Chairman. I think that might be taking away from our responsibility to enforce the law.

As to what the definition of prima facie would be, that would be something we’d have to work out, but I think again it’s a good-faith thing, recognizing in that first 3 months that people, if they are likely to be applying—that would be my interpretation—we would probably defer any action.

Mr. MAZZOLI. Let me just suggest, because we will talk about this later, that it is my judgment and personal feeling that in order to overcome what is a good-faith concern and which would be legitimate criticism of the fact there is a 3-month kind of a no-man’s land or a limbo in there, everything should be done basically to accept a person at that point and wait for the engagement of the law itself, which requires the storefront outreach to be set up, and the paperwork to be developed.

It seems to me these people ought to be protected and given that opportunity.

Let me ask you about outreach. A person is unwilling to come to talk to the Immigration officer, so we say:

“You don’t have to. We are setting this thing up so you can go to a local church, in the basement.

They say:

Yes, but if you look at this thing it says there’s an INS person who is on call and is going to be giving advice to the people, and the INS person is the one I’m really afraid of. I don’t want to go anywhere where there’s an INS guy.

Can’t I tell the people, the detractors, the criticizers of the bill that,

Your constituents would presumably never have to see an INS person until after the voluntary agency or after this intermediary party has given a once-over pretty carefully to the documents and papers and given advice. Only after making a judgment generally that you qualify would you then go downtown to talk to the INS person, but the INS would be available to the voluntary agency to give advice and to discuss things.

Commissioner NELSON. Well, Mr. Riso is leaning over anxious to answer that question.

Mr. RISO. There was that impression some time ago, and because of these concerns we have rethought our position from a processing point of view. So it comes down to the point at which the application is formally submitted, that we have been working out ways in which, if they were filling out the application, if they were getting counseling but not yet decided, do we physically have to be there? And that has now become a grayer area than it had been before where we were saying, "We want to be onsite." But we want to be onsite at the point where the application is submitted.

Mr. MAZZOLI. I can accept that. I do not think there is any beef in the INS, so long as the preliminary information training is done directly with these contact people. It seems to me that the contact person and the applicant ought to have an opportunity to talk freely away from the INS. If that contact person, having been trained by you in what to look for, says, "In my judgment you qualify," then at some point that person or the papers have to get into the process.

Let me ask your permission to suspend for just a few seconds. Mr. McCollum is coming back, and then he will begin some questions. I want to go over and vote, and I'll be back in just a second.

[Whereupon, a short recess was taken.]

Mr. MCCOLLUM. The hearing will come to order.

Commissioner, it is my pleasure to be here with you today. The chairman delegated me to reopen the hearing in his absence until he gets back from the vote. I have a number of questions I want to ask. I didn't have the privilege of hearing all your answers to his questions, so I hope I'm not repetitious in any way.

I'd like to start off by following through on the area that I was talking with Ambassador Asencio about. I didn't have the privilege of being involved in consultations last week. To what extent do we have delays today in asylum? I know you have 86,000 backed up.

How long do you estimate it takes for a person today, of the 2,800 that come in every week to start the asylum process, before the routine procedure would be finished, that the hearing officer would complete his task, and we'd be ready for everybody to be satisfied with the result unless there were an appeal taken through the court system?

Commissioner NELSON. You have asked a lot of points in that question, so if I might just work at it and follow up.

It is difficult to come up with a particular time frame. There is no question that volume has been the biggest factor. The volume has increased dramatically. There is no question that a lot of people are using the asylum process as a way around immigration laws. There is no question that we have an administrative problem in processing them within INS and within the State Department. In some cases the State Department is really slow returning advisory opinions. In other cases, they are pretty fast and then the delays are in our shop. It is a very complex area because there are so many new claims and so many legal and other maneuvers available.

But if I could answer it in a general sense, Mr. McCollum, there is no reason it can't or shouldn't be a more rapid, fair, and efficient



procedure. The basic asylum claim that the person has—and, of course, the applicant has the burden of proof—in most cases can be presented fairly and openly with all the testimony required in the matter of a day or so and in many cases less. And there is no reason, in theory for lengthy delays.

If I can just ramble a minute, there are a couple of things we are looking at administratively. I was in San Francisco recently looking through some of the procedures there. We ought to be able to expedite some of those cases where people have merely filed a claim and haven't provided any backup information. Like the court, there's a certain point at which you throw a case out if they don't come up with the backup evidence.

There's a lot that could be done.

Mr. McCOLLUM. I'm not being critical in any way of what is being done. I am so concerned about the law that we are about to pass and the speedup of the process and the backlog that I want to find out as much as I can—and the committee does—I'm sure, to find ways we could assist you in that.

I wasn't able to be here yesterday morning, but I understand the Attorney General indicated—I think maybe you repeated it here somewhere in your testimony—that the timetable we have in the bill is not practical as far as the time it takes to handle all these processes at each level.

Well, obviously with 86,000 backed up right now, I can understand why at the moment it might not look like it is reasonable. But what I'm concerned with is to get some grip on what we are dealing with. I've heard a figure used by some other people in your shop of about 2 years. Isn't that fairly reasonable?

Commissioner NELSON. In some cases it does take 2 years. I can't give you an across-the-board figure.

Mr. McCOLLUM. Each one would vary, but it wouldn't be impossible that the average time of these 86,000 is going to be 2 years.

Commissioner NELSON. One reason for that, Mr. McCollum, of course, is the process. I wish I had it with me, but there is a paper I had recently called, "The Odyssey of an Asylum Application," and it listed about 20 steps that a case goes through under current asylum processing procedures—the administrative contact, the immigration judge, being referred back and forth for rereview, up through the court process. So you can have all these 20 steps. And this is what is going to take tremendous time. In addition, some of the delays are administrative—no question about it.

Mr. McCOLLUM. The chairman has reentered. I'd like to be able to continue.

Mr. MAZZOLI. Surely.

Mr. McCOLLUM. Thank you.

Mr. Nelson, in light of the same area, I got some figures from my office from other folks at yours—I don't remember whether it was the district office or who gave us the figures a couple of weeks ago—with regard to what had happened to the people who were released from Krome, because I was interested in the asylum issue. If I recall correctly, there were 1,170 or so folks released from Krome. The figures given to me were that 66 of those, as of 2 weeks ago, had initial asylum hearings, and that of those, only six had been determined, that is, that the final ruling had come out. And of

those, I think the figures were that three had been granted political asylum and three had been excluded. And there were a few more of the 1,100 or so who had voluntarily returned to Haiti.

You may not have this on the tip of your tongue, but do you believe those figures are roughly correct?

Commissioner NELSON. I don't have the figures handy, but I think, in ballpark terms, they are correct. The key issue—and the very concern we had, which I think we expressed to this forum and others—was unless there was some impetus for people to have asylum hearings that they would continually delay.

In many cases, we have people in that group coming back for the fifth time before the immigration court, not having obtained a lawyer; and they keep coming back and coming back and coming back. And, of course, a current injunction requires that they must have a lawyer in order to have a hearing. In many cases, with lawyers, they had not filed the appropriate papers, or they asked for continuances or found reasons not to afford the hearing.

Delay also occurs because many of these cases we often see, are simply clearly not valid claims—although there are some, no doubt about it. And, of course, some of the interest groups are arguing all they can to delay the hearing process and then the appeal process. As you point out, of those hearings held, there were very few final orders because they can appeal up to the Board of Immigration Appeals, and then the court system.

Mr. McCOLLUM. Judge Spellman is still withholding his ruling on whether or not he is going to lift the requirement on pro bono attorneys, is he not?

Commissioner NELSON. I believe that is coming up this Friday.

Mr. McCOLLUM. Now, of the 86,000 that you use as a figure of those who are backlogged in asylum claims, what percentage are the Haitians? What percentage are the Cubans from the boatlift?

Commissioner NELSON. I don't have those figures handy, Mr. McCollum, although we can certainly provide those to you.

Mr. McCOLLUM. I'd appreciate it if you would.

Commissioner NELSON. The Cubans and Haitians are generally above the 86,000. While, some of the Haitians would be in that, but the Cubans generally would be added on to that figure because they are in a separate category. So in the 86,000, there would be Haitians, Salvadorans, and, of course, a real cross-section of nationalities.

Mr. McCOLLUM. We don't have that many Haitians over here so we are talking about having probably 70,000 or so asylum seekers that are not in the headlines every day. They are just what today has become routine; is that correct?

Commissioner NELSON. The Salvadorans are in the headlines a great deal.

Mr. McCOLLUM. Well, yes, but not nearly to the extent the others were profiled. I'd appreciate it if you could furnish that information.

Commissioner NELSON. We have those figures available and I'd be happy to provide them.

Mr. McCOLLUM. Also, there was an indication in U.S. News and World Report this week that there are quite a substantial number still crossing our Mexican border, of which I think all of us on the



subcommittee are fully aware. How accurate were the figures in that publication?

Commissioner NELSON. I did read the article. I was very impressed with the article. I have not personally nor had staff check the exact accuracy of the figures, but I would just like to leave my comments in general form. I think it was a well-done article, well-balanced, and one that can properly raise the concerns of the American public for the need for immigration reform.

Mr. McCOLLUM. I won't be around, unfortunately, I don't believe, next Tuesday or whenever you have your oversight hearing; I wish I were. But I'd appreciate your providing the subcommittee with corroboration, denial, or some kind of information about the figures they used as to how correct they were.

Today at the Mexican border, do you have any estimate or idea on how many, in percentages, are really getting across? Are 10 percent of those trying getting across? Two percent? Fifty percent? What is a realistic estimate today as opposed to 2 years ago when the chairman and I visited Chula Vista—and others on this subcommittee—that we are actually apprehending?

Commissioner NELSON. That, of course, is very hard to know. By the nature of the business, you are never going to know how many you get and how many get through. I'd like to refer to Mr. Salgado.

Mr. SALGADO. That really would be a speculative answer. We could indicate that the recent implementation of the Anta-6 infrared scope at Chula Vista revealed that in one portion of that sector alone we were apprehending approximately 90 to 93 percent of those seen attempting to cross the border. Now, that is only one geographic location, utilizing the Anta-6 scope. That gives you an indication, at least in that particular area, what our apprehension rate is vis-a-vis those that are gaining entry. But that is only limited to the use of those scopes in a small geographical area. Other than that, it would be pure speculation because many of those who get through we don't see or they are smuggled in. But I don't have a ratio for you, sir.

Mr. McCOLLUM. Last Friday I happened to have a very quiet lunch with General Chapman down in Florida when he was visiting down there, former INS Commissioner. I didn't seek it out for this reason; it sort of came up by accident.

But in the process of discussing things over lunch, he told me there was a report done for him several years back on how to seal the border basically between Mexico and the United States, in which he claimed his recollection was that that report showed we could seal it up to 90 percent by adding this, that, or the other equipment, much of which I suspect we have been working at adding over the years.

Do either of you gentlemen have any recollection of such a report done for Chapman back in those years?

Commissioner NELSON. I don't. I have had several meetings with General Chapman and that has not come up.

Mr. SALGADO. I'm not privy to it.

Mr. McCOLLUM. If it could be resurrected out of the files, he was very sure that it had.

Mr. MAZZOLI. The gentleman's time has expired.



Let me yield myself a moment and then we'll proceed to the implementation area.

You mentioned in your statement, Mr. Commissioner, that you believe the bill ought to go back to the pattern and practice approach for criminal fines rather than the current reading of the bill.

We put a citation step in. So we have the first 6 months of education, then we have a citation—a guaranteed first bite—then you have your civil penalties, and finally criminal penalties.

Do you think you really must go to a pattern and practice before you get into the criminal area? Do you think we need to resort to a pattern and practice where you do now have a citation step? It seems to me the employer is going to be so much on notice that if you have the citation and then you get him for a couple of civil remedies, it just seems to me at that point you almost should be able to go into the criminal side of it.

Commissioner NELSON. I think that was in the area of the fine-tuning recommendations, so let me start at the other end, if I might.

I think what is in the bill is excellent, the idea of a stair-step approach. The notice and the citation is outstanding, because it gives the time to implement and notify, and that's very good. Also, the progressive nature of the penalties is good.

I think one of the concerns—having practiced criminal law myself—is you can get into a lot more burden-of-proof problems and difficult problems in the criminal ones and you really want to go after the bad actors. And, of course, the injunction would be a very good way to do it, to establish the notice and the intent, and after you did that you would be in a better position to go forward in the criminal. And as a practical matter, I would imagine that would happen a good part of the time, and whether you wanted to make that a requirement or not I really think is debatable.

Mr. MAZZOLI. Let me ask you this: Yesterday we had testimony from a Member of the House who suggested that the coverage of our bill was incomplete. The Government itself was not covered under the employer sanctions because there is a penalty charged even if the employer is referred by a State or Federal agency.

Commissioner NELSON. I just came in when the Congressman was testifying to that. In fact, it was intriguing. So I'm only talking off the top of my head. I think there is, of course, some concern that you don't let public employers or employment service agencies get by with what you wouldn't allow private entities to do. First of all, I really don't know that that is a big problem, that the State employment service is referring a lot of illegal aliens. In fact, one of the Congressmen—I think the Congressman from Washington—last year proposed that if illegal referrals came from a State employment service, this would be a defense to the employer who could be charged with employer sanction violations, and we think that might have some merit.

So I guess I would only say that we ought to look at that issue more. I think you raised the question, Mr. Chairman, whether legally you'd have the same kind of basis to go after the State government or whatever on sanctions. There are a lot of issues there.

But I think the point raised is that we need to tighten up overall, including the State employment service.

If you will give me a chance, I'll run a little bit more. I think one of the aspects we need to work at are the job-related aspects. We have had a couple of pilot-type approaches with State employment services to have them come in behind INS to fill vacancies generated by illegals who were taken off the job. Because, let's face it, there is an impact on our unemployment situation, and more of that we think can and should be done.

So I think all this area needs to be looked at and addressed.

Mr. MAZZOLI. I wish you would give us some advice on that because it was certainly not our intention to exempt the Government from the reach of this act. It was simply to exempt nonfee-producing activity from the reach of the act. And if somehow inadvertently we have made this thing imbalanced as a result, we want to go back to that.

Commissioner NELSON. I would be convinced that within Government regulation, short of any statutory requirement, you could be sure that State employment services have screening procedures to avoid being libeled for violating the spirit if not the intent.

Mr. MAZZOLI. Maybe now, Mr. Riso, you could give us a slide presentation here. If I understand, this is the way you would seek to implement this act when it becomes law. Is that the idea?

Mr. RISO. That's basically it, yes.

I might add that this plan was prepared largely for us to communicate internally within INS and, secondly, to be able to communicate with affected publics. So, therefore, some of the things I will cover are pretty old hat to you.

As we see it, we have two fundamental areas of concern in implementation. One is control of illegal immigration and, second, legalization of those individuals who have been here for a period of time illegally but who would qualify for participation in the legalization program.

The results in a shorthand way are: We are looking to provide a disincentive for the employer and at the same time to deal humanely and realistically with those who have been here quite some time.

The general provisions—and as I say, we find this slide useful externally, form the basis of the planning assumptions which I will get into.

We feel—and I will deal first with employer sanctions and then Mr. Salgado can handle some of the details on questions—that employer sanctions is the important addition to our enforcement tool. And it's one of three elements to control the U.S. borders.

As we see employer sanctions it's the addition of new procedures to current operations:

Increased liaison with other agencies—not new, but increased liaison.

Clearly, a period of time of employer and public education.

Monitoring compliance.

Establishing a data base on what the experiences have been with different employers and groups of employers.

And our intent administratively would be to focus the program upon high-impact employers, the habitual violator, work from well-



developed leads, work from fraud cases, and clearly follow up on previous violations.

Mr. MAZZOLI. So in a sense, Mr. Riso, you and the Department would seek to target this program. One of the criticisms we have had raised is rather than have this affecting 100 percent of the American employers, or almost 100 percent, let's just target it to those that have shown somehow in some way that they have not complied with the law in the past. And we say we may not be able to go that far. But is it correct that administratively you will target the application of your resources to the question of enforcement of employer sanctions?

Mr. Riso. Recognized targets may change as events change.

The employer responsibilities. A good-faith examination. We are not expecting them to become experts in the identification of fraudulent documents.

Our planning basically and our level of planning on employer sanctions is in some instances affected by that 6-month education period. But as the Commissioner said, look upon it as three phases: one, an extensive employer education, and the planning of how and where to target to get the most effective use of our resources, and how we realistically monitor. We plan to spend approximately 6 months.

After the first 6 months—from the 6 months to the first year—initial enforcement, warnings, second violations, and third violations, working toward being fully implemented. After 1 year, with the temporary verification system, and all of the support systems develops, the program can move forward.

We have made some assumptions that most employers will voluntarily comply if we make compliance pragmatically easy for them.

Let me go to the legalization part because this is more extensive, because our planning is predicated on getting to this first.

In concept form, imagine a process in which the applicant comes forward with the application and the necessary documentation, with the assistance of a voluntary agency or other community organization, receives counseling and some assistance—what do you provide? Do you qualify or don't you qualify?—leading to the submission of an application to INS.

The step between the preparation of the application and the submission of it might be separately and physically apart. We have been looking at that.

What we would do is go through a two-step review. We would review immediately upon submission of the application by having INS people there and coming to an initial determination of eligibility subject to file checks. We would then forward the application to a central processing facility, do the necessary file checks, and then make a final determination.

There would be a notice to both the community or voluntary organization on the status of each application, and clearly a notice to the applicant of the final outcome. Where denied there would be the appeal process available to the person.

Now, we have made—it is important I say this—some planning assumptions in designing our system. We are not assuming this is the right number. What we have done is tested our system in terms of what volume can our system handle. And one of our plan-



ning assumptions is that there will be 2.3 million who will apply. There are 6 million now in the United States, 1.6 million applying for temporary residence, and 750,000 applying for permanent residence.

Now, it ought to be said, if our assumptions are not right, we have a give or take of about a half million before our system would be put under pressure.

Now, the safety valve in any assumption you make is the rate at which people come forward. If they all come forward the first day, the magnitude of the problem is substantially greater than if they come forward in a reasonably even period of time.

Mr. MAZZOLI. They have to come out within a year?

Mr. RISO. That's right. You can assume a year.

And finally the problem—if we all waited to the last day in order to pay income tax, you'd have another problem.

But there's a great deal of flex at that 2.3 million, and we've estimated about a half million in either direction.

We have made four other assumptions—really five. The one not stated here is that we can do this job and we will do this job, and we will not accept “cannot.”

So with that in mind, we have made four other assumptions to direct our planning.

We will try to keep most of that work out of the normal operation of INS. We've got, as you well know, backlogs in other internal issues we are dealing with. We'd like not to add that to the existing structure.

Mr. MAZZOLI. Mr. Riso, let me ask you this: You mentioned that legalization would probably precede your activities in the employer sanctions. We would not have a situation where we would neglect to do things like enforce the border and add internal activities as we are legalizing because that could, then, send out the signal to people, “Come on in because we are devoting all of our time now to processing paperwork and we will be very neglectful at the border.” We don't have that situation.

Mr. RISO. That was not our intention.

Mr. MAZZOLI. In other words, you are going to have the normal amount of enforcement. The particular stress will be trying to handle the paperwork on the activities of legalization, but not to the extent that enforcement will be hampered or reduced.

Mr. RISO. It is our intention to handle this separately and not to disrupt our normal operations.

Mr. MAZZOLI. All right.

Mr. RISO. The second planning assumption is that most of the expenses of the legalization program will be borne by the applicants, and that will be recovered through being charged a filing fee.

We have planned that the initial processing will involve qualified voluntary and/or community organizations with a substantial amount of counseling and application preparation clearly in their hands—for two reasons: one you cited earlier, the inhibition about dealing directly with us; secondly, the volume of work. We don't want to hire that number of people unless we have to.

Finally, an internal issue. For us to receive, review, and give the applicant back the necessary pieces of paper he or she needs, we

have to establish a central processing facility in ADP. And it is important to us as a reminder.

Mr. MAZZOLI. Well, this is one time where we have some knowledge beforehand of what our responsibilities are, so designing a program and getting the form set up ahead of time should present no real problem to the professionals. Sometimes coming into the situation where you have inherited a whole tradition of handling a matter makes it much more difficult to automate that.

Mr. RISO. This should pose no real difficulty.

Mr. MAZZOLI. Except for the one, of course, of money. We are talking about trying to give you what you need in the way of money and people. But technically there should be no problem, is that correct?

Mr. RISO. That is true. In fact, the irony will be that this process may work smoother and better among all operations.

Getting back to our assumptions, our responsibilities—we would like to be able to train those people or organizations in the nature of the program and their responsibilities, retain for INS that determination of eligibility, monitor the program, and then a massive coordination of the public information effort which is critical to the success of this program.

Within the district office—and I'd like to cite this—it is our intent to keep the operation apart from the district office, but there will be involvement of the districts in the following ways:

Clearly administrative support of those INS people working with the voluntaries.

A role in the information program, clearly.

Processing of file requests.

They will participate in investigation of any fraud and any denied cases.

And ongoing liaison so that we from Washington get a clear view of what is in fact happening within each of the cities where we think our volumes are going to be.

But these district offices will not be charged with administering the legalization program.

Let me go back, bringing coals to Newcastle. We have assumed additional resources will be provided to keep the operations sound.

At the site—these are the areas that have become grayer because of legitimate concerns expressed by organizations we have been dealing with and trying to balance their need to retain consistency with their advocacy program and our need to maintain the integrity of the process. And so consequently we see for ourselves technical assistance if needed, but clearly, as an INS responsibility, reviewing the application when it is submitted, reviewing samples of applications for temporary residence, interviewing any questionable candidate, and interviewing a random sample of all candidates.

It is our contention that there will not be overt enforcement at any site where the person is going in to receive assistance, counseling, guidance, and filling out an application. There has been concern expressed that we'd be in a shorthand way hiding behind the screen. That is not our intention.

Our responsibilities at an INS processing facility are really the processing function: Receipt of the paper, background checks, a



final review, if that is what's necessary, and where there has been fraud, where there is a denial, referral to the field for enforcement activities.

We will also notify both the agency sponsoring that application and the individual of the approval or denial.

Mr. MAZZOLI. At that point when the applicant receives a letter in the mail saying, "Your application for legalization has been rejected," is that person then going to be targeted somehow for deportation, or do you turn to the next application and try to work through the crush, and figure he might get the word from that to go back home?

Mr. RISO. It is planned to refer it to the district office.

Mr. MAZZOLI. Even though you may feel this is not a very strong case, it may be strong enough to get by the first hurdle, which is the initial discussion. But maybe it doesn't have the same kind of data supporting him as some of the other ones. That person isn't in jeopardy until after there's a final decision made; is that correct?

Mr. RISO. That's right.

Mr. MAZZOLI. So if he senses that things aren't going well, he might get the word just from that sense of things and might be able to beat a retreat before the final word comes out.

Mr. RISO. There is considerable what I would call skimming in this process. It would be our expectation that good applications are encouraged to be submitted to us in the first instance.

Mr. MAZZOLI. OK.

Mr. RISO. At that point we have the initial onsite review.

Mr. MAZZOLI. The ones that are turned down—at the first little block at the slide, after they go to the voluntary agencies, and the voluntary agency suggests they are in pretty good shape and they give them to the INS but the INS rejects them at that point—that person is at that point subject to being put in the pot for the normal kind of law enforcement; is that right?

Mr. RISO. That is our plan. One addition on that is we have not required, and do not plan at this time to require, the voluntaries to report any contact with someone they suggest goes away.

Mr. MAZZOLI. That's what I was going to ask.

Mr. RISO. We have not required that. We have not asked for any information on anyone they counsel with and then persuade not to apply.

Mr. MAZZOLI. Only the ones the voluntary agencies decide to send on to you get into this chain. Otherwise you don't even know they exist.

Mr. RISO. You get into our system the moment you hand us an application and that's up to you.

Mr. McCOLLUM. My understanding is that INS will not interview all of the candidates even for permanent residence. You will just look at the application and do a sample interview yourself. You would depend on the VOLAGS to do a substantial portion of the interviewing; is that correct?

Mr. RISO. No; that is not now correct. The voluntaries have expressed some concern about abdicating an advocacy role if they were to engage in the process once the application was received. So what we have done is really pulled back a bit and said the receipt of the application and the interviews and the decisions as to wheth-



er the person qualifies or not will be done within and by INS people.

Mr. McCOLLUM. All the way.

Mr. Riso. That's right.

Mr. McCOLLUM. After that point is passed.

Mr. Riso. Yes.

Mr. McCOLLUM. So you're going to screen everybody yourselves.

Mr. Riso. We will screen. That's one of the ways in which we hope to disengage what was becoming a contentious feature about on-site presence and such.

Mr. McCOLLUM. Thank you.

Commissioner NELSON. I might add a comment that might be appropriate. As Jerry said, the way we are visiting this now would take away some of the conflict problem with the VOLAGS. But that must be addressed, whether by regulation or otherwise, or operating procedures or contracts, that the voluntary agencies or any other group that is involved in the processing, and so forth, must separate clearly any processing role from any advocacy role. If they are going to get into advocacy, then they can't be into processing. Or if they want to separate the Sierra Club into different units, or one organization would do the one and the other the other, that can be addressed. But that is an important area we must deal with.

Mr. Riso. The way we plan to organize this—and this touches on some of the questions raised already—we look upon legalization as a project separate from the normal operating structure. We recognize that what we put into place now will change but that we ought to have a structure in place on day one.

We initially will begin operations in Washington. This will be a full-time assignment for those people who are assigned, and we'll put them all in the same place.

And we will then get into a field organization as the program starts. We have not targeted but we have tried to identify those 8 to 10 or 12 areas where we are likely to have the greatest concentration.

That is the initial day one organization leading to a potential organization where we continue to have the project management, field management, with the employment of area managers onsite and major concentrations to provide liaison between those organizations we sign contracts with or district officers in Washington.

We may get to that. And in the area managers, we may have 12 or 15.

Now, to do this job—and it is complex but it is possible—we have outlined what must we accomplish by when.

Within the first 6 weeks we have the following items that we have to undertake, and basically I break them down into three parts:

Clearly a massive public information program. And we have to design it to reach a variety of the population.

We are ready to sign contracts with ad agencies if that will help get our message across.

Second, we have to get the central processing facility up, and that has to be operative within about 90 days after passage of legislation, a difficult administrative problem.

Third, the negotiations, and hopefully successful negotiations, with the voluntaries or communication organizations in the beginning of their training. And the regulations and all the forms have to be ready by then.

We have anticipated most of these needs and could gear up right away.

In the second 90 days to 120 days, at the sixth week we would hope to begin opening up the screening centers, run the public service ads at day 45 to day 60, and gradually expand the operation of the intake and counseling and add our staff where needed.

I identify again day 90 as the day the central processing facility should begin operations.

Mr. MAZZOLI. Mr. Riso, may I ask you a question. Do you anticipate reimbursement formulas with these voluntary agencies or civic groups or church groups, or is it so much per person whom they process?

Mr. RISO. Our current planning is based on so much per person, so much per application submitted.

Mr. MAZZOLI. In other words, if 20 people came into the office and the voluntary agency said, "Really only one of you qualifies to have further work done," they'd be paid for one person?

Mr. RISO. That is our planning, and that's going to be negotiable.

Mr. MAZZOLI. I see.

Mr. RISO. We have identified an appeal process. I simply identify our recognition that the appeal process must be independent of the initial decisionmaking process to keep clear of our professional conflict of interest. Again, denied appeals are sent to the alien and the case referred to the INS district office. We will engage a normal enforcement process on anyone turned down.

During legalization, again no risk appearance for the applicant. Clearly a priority is fraudulent and serious offender cases referred back to the district office, and the field offices continuing normal operations.

Mr. MAZZOLI. Let me ask you a question. If a person were to present himself at a voluntary agency and he fits in by whatever cutoff date and he has good proof of that—checks, rent receipts, letters—but on the other hand, he has also used false and fraudulent documents in order to handle being in this country illegally, what do you do?

Is possession of those and past use of this kind of documentation, stemming from his illegal presence in the country—again he has not hurt someone, no crimes of violence, no other activities, except those directly related to his desire to stay here—are those going to be enough to reject his eventual application for legalization?

Mr. RISO. Let me refer that to Joe in terms of the enforcement issue, in terms of what priority we give that.

Mr. SALGADO. I think equity would probably maintain or dictate that probably at that particular time that would not foreclose his application. If in fact there had been some other offenses attached to it, criminal activity, naturally that would be a fact to be weighed in. I don't think we would make a blanket statement at this time, but I do think the equity would attach.

Mr. MAZZOLI. I thank you. I think you certainly wouldn't want the exclusion process to be a gimmick. On the other hand, if the

activities are just using false documentation, which hasn't defrauded anyone, but has just simply been used in order to give him a cover to stay in this country, that person ought to be looked at very sympathetically.

Mr. RISO. That is basically the status of our plans today.

Mr. MAZZOLI. Let me commend you, because I know you have been working, as we have, by the seat of your pants, never knowing from day to day what bill would emerge and what details would be entered. But I think you have done a very excellent job of trying to handle the program and the process of dealing with the bill.

Skip has a question.

Mr. ENDRES. Just a technical question that relates to both protection from deportation and work authority while the application for legalization is pending. At what point in that process would, in fact, the alien who has filed an application be protected from deportation, and would he be authorized to work and would both of these facts be communicated to him in some form?

Mr. RISO. It was our intent that upon receipt of the application they in turn would get a receipt, and that would serve them while the application is being reviewed and doing the file checks.

Mr. MAZZOLI. During that period of time, they could work, they could come and go, they would have no fear of being deported. They may ultimately not survive the analysis of the test, which is a different story, but during that period of time they are protected.

Mr. RISO. That was our plan.

Commissioner NELSON. Let me just add onto that, Mr. Chairman. Presumably, a very, very high percentage of these people will be working when they apply. Obviously they have to qualify to avoid the public charge test. In fact, I think the committee ought to look very hard to some language in the bill that would require some kind of corroborating evidence from the employer, in addition to the application, from the applicant, showing the employment history. Because that's going to be key both to minimize the fraud problems, to establish a good record, and of course to assure his valid employment.

Mr. McCOLLUM. I have some questions but not about this procedure.

Mr. MAZZOLI. Go ahead.

Mr. McCOLLUM. There are three areas that I will cover very quickly that I wanted to ask about, to Mr. Nelson particularly, but anyone else can certainly comment on them.

My understanding is that back in 1980 President Carter issued a proclamation that all aliens would be required to register for the draft. To what extent is the service implementing that today?

Commissioner NELSON. Someone else might be able to elaborate on it. I, of course, wanted to answer it from the other thing. I met the gentleman, Mr. Foley, from Selective Service out in the hall earlier. Of course, under the Efficiency Act that was passed last year that you all had so much to do with, it took away this requirement for alien registration, which was going to be very burdensome and unnecessary. So we think that's important.

Now, where that conflicts with the Selective Service registration issue, I don't really know.



Mr. McCOLLUM. Would there be any problem if we put a requirement in, that you had to have a card there, and they had to register when they came up to be legalized?

Commissioner NELSON. My offhand reaction would be there would be no problem with that.

Mr. McCOLLUM. I have another area I'd like to ask you about. It has to do with your comments of concern, which I also share but have a peculiar problem with from Florida, on the Federal reimbursement moneys with regard to questions of those who are legalized.

There seems to be a wide division here. There is the block grant concept the administration wants, and there is what I have been promoting and certainly took a part in, which was to comply with my State's wishes and concerns over the expenses, which is a full reimbursement.

Someone has suggested to me—and it didn't come from those folks at Tallahassee, I can assure you—there might be grounds for compromise in between somewhere in the use of a matching funds type of concept, where dollar for dollar the State puts up 50 percent and the Federal Government puts up 50 percent, rather than a block grant.

Has that been considered in your shop?

Commissioner NELSON. Not specifically, Mr. McCollum, but I think the point is well worth pursuing. I just might add on the question of the funding, I think Senator Dirksen said, "A billion dollars here, a billion dollars there, and pretty soon it mounts up to real money."

It really is a monetary issue as to who ought to pay and what the formula ought to be.

I think as the Attorney General testified yesterday, of course, it really has to be a shared operation, and where the shares are, I think, is subject to analysis and negotiation.

I personally met with several governors, including Governor Graham of Florida. We are talking to counties and other people. I think we need to continue the dialog. One thing I would hate to see happen is that county and state governments take a position, "Well, we are not going to get all that reimbursement. We are going to fight the bill." Because it's like any other thing. You've got to look at the big picture, and the big picture is if we don't get the reform, everybody is going to lose a lot bigger than if we do have it.

So I think it's important we work together, and I would pick up on your suggestion that we explore with the Governors, with the local officials, various kinds of considerations.

Mr. McCOLLUM. I would appreciate it if you would. I suspect that on our side we will be able to maintain—I don't know the chairman's feelings personally; I think I do from history. But I think there's a good possibility we will maintain full reimbursement through certain stages of this bill, but I can see there may be a need for compromise at some point.

I have had no one else raise that with me officially from the Governors, but I definitely would like to think that something different from a block grant could be in your bag of suggestions if that occasion arises.

The last question area I have has to do with following up on something unrelated to this hearing, but again I don't think I'll be able to ask you next week, and I would just like clarification on the policy for the future, whether you have it today or not.

We have in Florida an office which I am very familiar with, which is not a district office, but the one in Tampa. I can remember some time back I had worked with them in trying to speed up the process of handling routine immigration matters—not any of the legal problems. Their biggest single complaint to me—your people's complaint to me—is that they have terrible difficulty getting files and getting them quickly and expeditiously out of Miami. I would suspect that is true to one degree or another all over the country in offices outside the district, the suboffices, like the office in Tampa is.

My understanding at one point an effort was undergoing when you first took over to allow them to be a file office. I understand now from that level that they have been led to believe that that cannot take place unless they become a district office. So they have been lobbying me to somehow urge you to make them a district office.

I have no desire to create bureaucracy to make it a district office, but I have a definite desire to see a speedup in their ability to respond to the burdens on them. And I'm wondering if there is any way you are either now considering or could consider, not just for Tampa but all over the country, allowing the more removed offices to maintain their own files routinely.

Have you given any consideration to that?

Commissioner NELSON. We have given a great deal of consideration to all aspects of files. And if I might add in a broader tone, I think we have made a move that will be very effective downstream, and we have put \$10 million in the fiscal 1984 budget request to create a national record center, the idea of automating these records, and getting into the 20th century, if you will, to be able to better process and utilize records. But it is absolutely essential with the number of records we have.

So that is underway. Planning and implementation steps are underway. The money is in the budget.

In cases where they have remote files in the suboffices, that is a difficult one, and I wouldn't really be in a position to say we'd do it or not. You do have problems of lost files. You do have problems with keeping proper control. We need to continue to work at it. I will see that we explore this.

Mr. McCOLLUM. I would appreciate it if you would. I'm looking at 1983, 1984, 1985. And although I realize you have to keep track of these things, it seems to me while they are getting automated into your system, they will be just as safe—and they aren't very much so today—in those local offices as they would be in the big district office. And it would certainly help my staff, it would help the staff of all my colleagues, and a great many individuals who just are waiting primarily because they can't get the blasted file out of Miami or Los Angeles or whatever.

That's my one oversight question, Mr. Chairman.

Mr. MAZZOLI. Thank you very much.

I just have a couple of rapid questions.



One is, can you have whatever figures you can develop to us by next week at our oversight hearings, on the question of how much money you can use and how many people and so forth, that we talked about earlier today?

Commissioner NELSON. Well, we certainly can discuss in general terms, and I think we'd probably have a legal question as well as a dollar question as to what we can be providing since it has not been formally processed through the Department and OMB. I would be pleased to share whatever we can share with you, subject to those constraints.

Mr. MAZZOLI. Thank you very much.

Commissioner NELSON. We all do agree there are needed resources there, and we need to look down that path.

Mr. MAZZOLI. The last thing for me today is what I brought up yesterday. You might have been in the room when I talked to the Attorney General about the article suggesting somehow local police organizations will be deputized to work in immigration. And the Attorney General assured me that was never meant to be the case. He likened it to the cooperative effort of drugs. But if you were listening to my colleague, Mr. Lungren, he said there is a difference here between coordinating activities for drug busts and coordinating activities in this area, for a lot of reasons, not the least of which is the symbolic part.

I do not want to ask you to make any final statements today, as we will probably be asking these questions next week.

It is certainly clear from what I glean from all this that we do not want local police to be doing the work of the Immigration Service. We want you to do the work. And if it means we have to get more money and more people and more equipment and whatever else, that's what we are disposed to do.

Accordingly, we would hope this explanation by the Attorney General yesterday is exactly right: that there is only to be the normal cooperative effort. The local police are not to be charged with the responsibility of going into that bar and tavern and find out who is there legally and who is not. We do not want that.

I think our best interests—yours and mine and everybody's—are not served by that kind of activity.

Commissioner NELSON. Your comments, Mr. Chairman, I fully adopt, as well as those of the Attorney General. I have no intention to do any of those things that you indicated. It was a clarification of what had been perceived earlier to be a hands-off working relationship policy, and we wanted to correct that.

Mr. MAZZOLI. I do not understand law enforcement much. I can understand if a policeman is called into a bar because there is a fight, and he breaks the fight up. Then in the normal process of booking people he finds somebody is not there legally. He should not overlook that. He turns that in. But you do not go into the bar and start checking papers, and then go outside and tell the INS guys, "Come on in. I've got these two people here." That is what we do not want.

Commissioner NELSON. Right.

Mr. MAZZOLI. Gentlemen, and everybody in the room, you have had remarkable patience. We have had a long day.

Thank you very much. We stand adjourned.

[Whereupon, at 2:05 p.m., the hearing was adjourned.]





# IMMIGRATION REFORM AND CONTROL ACT OF 1983

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WEDNESDAY, MARCH 9, 1983

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES, AND INTERNATIONAL LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 9 a.m. in room 2226, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Lungren, Fish, and McCollum.

Staff present: Arthur P. Endres, counsel; Eugene Pugliese, assistant counsel; Peter Regis and Harris N. Miller, legislative assistants; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. The hearing will come to order.

Prior to commencing today's hearing, I would like to insert into the record the testimony of the Honorable Peter W. Rodino, Jr., chairman of the committee. As we all know, Chairman Rodino has been in the forefront of immigration reform since his association with this subcommittee in 1971. I welcome this opportunity to present his views.

[The statement follows:]

TESTIMONY OF HON. PETER W. RODINO, JR.

Mr. Chairman and Members of the Subcommittee: I am pleased to be here today to express my support for H.R. 1510, the Immigration Reform and Control Act of 1983, and to make some observations concerning specific provisions of the legislation. I believe that similar legislation would have been enacted as the Immigration Reform and Control Act of 1982 had not the clock been running against us in the waning days of the 97th Congress. I want to commend the Chairman of the Subcommittee for moving quickly this Congress, and for scheduling a full set of hearings on this important legislation.

I do not need to tell the Members of this Subcommittee that this is controversial legislation. It is essential that it receive a full hearing, and that we then act as expeditiously as possible in this session.

Twelve years ago, on May 5, 1971, this Subcommittee under my Chairmanship began a series of hearings into the problem of illegal aliens. Altogether, we held 16 days of hearings across the country (Los Angeles, Denver, El Paso, New York, Chicago, and Detroit) with final days of hearings in Washington. Based on these hearings, we drafted employer sanctions legislation which passed the House by wide margins in 1972 and again in 1973, but was not enacted due to Senate inaction.

We estimated at that time that illegal aliens numbered between one and two million, that the number entering had been increasing since 1965, and that the number apprehended annually was greater than the number of aliens admitted as lawful permanent residents. Now, 12 years later, the number of undocumented aliens has increased and apprehensions far exceed the number of aliens entering legally. The

resident undocumented alien population was estimated at between 3.5 million and 6 million in 1978.

We concluded in the early 1970's that the economic imbalance between the United States and the countries from which illegal aliens come, coupled with the easy availability of employment here, accounted in large part for the undocumented alien phenomenon, along with the shortage of INS personnel. This remains true today.

We can do little in the Judiciary Committee about the economic imbalance between the United States and the developing countries. Yet, this problem cannot be ignored by the Congress and the Executive Branch and long-term solutions to this difficult problem must be actively explored.

We also found in the early 1970's that the undocumented alien problem was no longer limited to the Southwest, but that it extended to most of our major metropolitan areas. Similarly, it was no longer limited to agriculture; considerable numbers of such aliens were found in industry. We also found that the so called "illegal aliens" displaced American workers, particularly in the lower-wage occupations. These findings are even more valid today than they were previously.

In fact, my good friend, Althea Simmons, Director of the Washington Bureau of NAACP, recently testified that, "the continued influx of undocumented workers has a disparate impact on blacks, many of whom, are marginally employed or unemployed. Many blacks are forced from employment rolls by the undocumented worker who is usually hired at a subminimum wage and without the protection of organized labor". This is indeed very troubling and with black youth unemployment at almost 50 percent, we must move quickly to eliminate this unfair job competition.

The undocumented alien problem has deepened and intensified, both geographically and occupationally. We found that, apart from their violation of the immigration law, undocumented aliens were not generally involved in criminal or drug-related behavior. We also found that, by virtue of their illegal status, such aliens were subject to exploitation in the form, for instance, of substandard wages and working conditions, and denial of fringe benefits and vacations.

My purpose in cataloguing these findings of more than ten years ago is to underscore how little things have changed. The major change we see is in the numbers, which have increased and will continue to do so unless we act. Immigration to this country is increasingly coming to mean illegal immigration. According to INS, 5.4 million (5,381,107) legal aliens registered with the alien address report program in January 1980, and of that number 4.5 million (4,532,647) are permanent resident aliens, or immigrants. In all probability, they are outnumbered by the resident undocumented alien population. This is a sad commentary on U.S. immigration policy.

There is considerable concern in discussions of illegal immigration about the need to control our borders, a concern that I myself share, but there is another cause for concern. We are proud of our long tradition as a nation of immigrants, a land of opportunity for the ambitious and asylum for the oppressed. This is all part of the American dream. Illegal immigration represents the underside of the American dream—the opportunity to come here and work and better oneself, but without the protection of the law, without the guarantee of justice, and without the promise of freedom. Unlike lawful immigration, which is beneficial to our society, illegal immigration is harmful to our society and the institutions on which it is based. We are permitting the development and perpetuation of an underclass of people who live here but are fearful of law enforcement authorities, do not seek necessary medical care, and are subject to every kind of exploitation in the work place.

With this as background, I want to express my support for the legislation before this Subcommittee, H.R. 1510. The bill is substantively identical to the legislation reported out of the House Judiciary Committee last Congress. As such, it leaves the preference system in the existing law unchanged. In my opinion, this is one of the primary reasons it is a good bill. As I said when I offered the amendment striking the proposed changes in the preference system during full Committee mark-up in the last Congress, we need to know the impact and consequences of legalization before we embark on any major adjustment of the preference system. We must not put "the cart before the horse" and while I agree that legal immigration issues should be considered, there will be sufficient time to do so once the legalization program has been completed.

At that point, when we have some idea of what we're talking about in terms of numbers, countries of origin, and potential relatives, it may be appropriate to undertake a study of the existing numerical limits and preference system with the thought, perhaps, of adopting a more flexible system which could be adjusted in response to both domestic and foreign needs. I was intrigued by a discussion of this



issue in a recent United Nations report surveying international migration policies and programs. Let me quote briefly from the report:

"The United States is somewhat different from the other immigration countries, in that no other nation appears to have adopted numerical limits as a migration control mechanism, something that has been a feature of United States immigration policy since 1921. The United States system relies on the utilization of numerical limits—a worldwide ceiling of 270,000 (excluding refugees), and a per country limit of 20,000—that are largely based on precedent rather than on any recent assessment of national needs. The overall ceiling—which, as previously noted, does not apply to refugees—remains fixed, regardless of changing international circumstances. (United Nations, *International Migration Policies and Programmes: A World Survey*, 1982, p. 5.)"

We may at some point wish to undertake a revision of the law which makes our immigrant admission policy more responsive to national needs and international circumstances. One possible way of doing this was explored by the Select Commission on Immigration and Refugee Policy. For example, the Commission considered the creation of a council of experts with ongoing responsibility for studying domestic and international conditions and for making periodic recommendations regarding the adjustment of immigrations levels and the revision of immigration policy.

This concept, despite the strong support of several Members of the Commission, including Father Hesburgh and me, was not ultimately adopted. I would recommend that the Subcommittee seriously consider the need for flexible immigration ceilings.

Further, I reiterate my strong view that the existing preference system not be tampered with at this time. It is working reasonably well according to those who administer the program—The Departments of State and Justice—and its modification is in no way integral to the purpose of this bill, which is the control of illegal immigration.

Ambassador Ascencio, the Assistant Secretary of State for Consular Affairs, has often remarked "if it ain't broke, don't fix it." I would add that this matter is as "politically-charged" as the issue of employer sanctions. Undoubtedly, changes to the preference system could generate substantial opposition from the Asian, Hispanic, Italian, Jewish and Catholic communities. I do not believe this legislation should contain additional controversial and emotional issues and for this reason, I urge the Subcommittee to avoid any modification to our system of legal immigration.

The centerpiece, the heart, the linchpin of H.R. 1510, is the employer sanctions provisions. Quite simply, the bill would make it unlawful to hire, recruit, or refer to employers for a fee aliens who are unauthorized to accept employment in the United States. The bill provides for a graduated series of penalties intended to guarantee that employers acting in good faith will not be penalized. It also includes crafted verification requirements which have the dual purpose of providing an affirmative defense for employers and of protecting those who look foreign from possible discrimination. I am well aware of the concern that employer sanctions will result in discrimination, particularly against Hispanics, but I believe that those who read the bill carefully will clearly recognize that the Judiciary Committee made every effort to respond to these serious civil rights concerns. For example, in addition to the verification requirements, which pertain to all new hires, amendments were adopted during full Committee consideration requiring the President, the Civil Rights Commission, and an Executive Branch Task Force to monitor any discrimination problems that result from employer sanctions.

It is clear that employer sanctions are neither the answer to unemployment nor the civil rights nightmare supporters and opponents sometimes portray them as being. They are, however, the necessary solution to a serious immigration problem which has been allowed to fester far too long.

In large part because of the years of neglect, it is absolutely essential that employer sanctions be accompanied by a generous and straightforward legalization program. I myself would also prefer that it be as simple a program as possible. I would prefer a one-date, one-tier program to the overly elaborate legalization provisions in H.R. 1510. The primary objective of the program should be to bring this "shadow population" into the open and the more understandable the program is the more participation we can expect. In my opinion, the use of a single eligibility date would also make the program more effective and easier to administer—not an insignificant concern when considering the monumental manpower problems confronting INS. I would also recommend that the Subcommittee carefully review the provisions of H.R. 1510, which exclude legalized aliens from various public assistance programs. Alternative approaches, such as tightening the "public charge" provisions or requir-

ing a demonstration of employability or a record of consistent employment should be explored in greater detail.

Whatever is decided on that, I cannot overemphasize the importance I attach to a meaningful legalization program. I have said before, and I repeat, without legalization I would not support this measure. There are two alternatives to legalization: accepting the status quo of a massive underclass of undocumented workers, or massive roundups and deportations. We do no one a favor by accepting the status quo, which is as harmful to our society as it is to the aliens in undocumented status. And surely we have learned our lesson from the 1950s regarding massive roundups and deportations. Operation Wetback is not something we would wish to repeat today.

Legalization is the only acceptable option, and it is an appropriate one, one with which I am personally comfortable. I am convinced that, given employer sanctions and increased INS enforcement—and that is essential—we will not have a recurrence of this problem again. I am convinced, in short, that a legalization program would be a one-shot occurrence aimed at a specific problem which we would be remedying.

Finally, I want to comment briefly on the adjudication and asylum provisions in H.R. 1510. I believe that the provisions in this bill have struck a delicate balance between advocates in favor of streamlining the adjudication process and those in favor of providing a full measure of due process. The provisions, in my judgment, are objective, fair, humanitarian, and above all, recognize our responsibilities under our international agreements relating to refugees.

Thank you for this opportunity to testify. Again, I commend you for your early and comprehensive action on this vitally important legislation. I look forward to its early passage.

Mr. MAZZOLI. Good morning, Mr. Sensenbrenner, as our first witness, welcome. We will hear from you now.

#### **TESTIMONY OF HON. F. JAMES SENSENBRENNER, JR., A MEMBER IN CONGRESS FROM THE STATE OF WISCONSIN**

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. I will summarize my testimony in the interest of saving time, and because I have two other subcommittees at 9:30 this morning.

I appreciate your invitation to speak before the subcommittee this morning. I would also like to commend you and the subcommittee for some very hard work on an issue of great importance to the American people.

While we do have some differences in the specifics of the legislation, the subcommittee's work, I think, will facilitate bringing this issue to the floor of the House of Representatives relatively soon.

Mr. MAZZOLI. Let me also thank the gentleman. Though he is not a member of the subcommittee, the gentleman and I have traveled together in the subject area and the gentleman has made many contributions during the course of the debate, just from the general focusing of attention of the Congress on this issue which, as the gentleman has said many times, tends to get pushed over to the back. So his attention has helped us.

Mr. SENSENBRENNER. I certainly appreciate the Chairman's comments, and I hope that by the time we finish this debate, he will not believe that a little bit of knowledge can be a dangerous thing.

One of the major criticisms the American public has had with our present immigration law is that we have "different strokes for different folks." If a cap on legal immigration is not enacted, then the current number of legal immigrants entering our country will continue to mushroom.

In 1977, legal immigration was 399,000. In 1980, it was 808,000. In 1981, it was 697,000. While the present administration has made a determined effort to reduce these numbers, there is no law which



places a limit on the number of legal immigrants, including refugees, which our country will accept.

The increasing number of legal immigrants have entered our country at a time when there have not been enough jobs to go around for our own citizens. "Compassion fatigue" has set in.

Americans are having a difficult time understanding why our Government continues to allow more people in this country who compete for jobs and place a drain on the treasuries of our State, local, and Federal Governments. Public opinion polls show that 80 percent of the American people want reductions in legal admissions.

The lack of a cap on legal immigration goes hand-in-hand with the method of allocating immigrants other than refugees. H.R. 1510 retains the current system and does not limit the fifth preference.

Currently, there is a fifth preference backlog of over 700,000, which is continually growing. Less than one-half of this backlog are the actual brothers and sisters of U.S. citizens. The rest are spouses and children of these brothers and sisters.

If the fifth preference is not modified, then closer family members will continue to have problems being united. If family reunification is to be a preferred public policy, it should be for the closest relatives—not a loophole to bring "every relative" into the country.

Any immigration reform legislation must include strong employer sanctions. They need to be strong to turn off the economic magnet of jobs.

The employer sanctions in H.R. 1510, which is basically the legislation which was reported out of the House Judiciary Committee in the 97th Congress, were considerably weakened. Thus, without some type of economic deterrent, illegal aliens will continue to be a problem.

I would point out that the Washington Post last year reported that in one documented case, one U.S. citizen was able to bring 69 relatives, including in-laws, into the country on fifth preference status, and that is something that has got to be limited.

I also have serious reservations about the provision in H.R. 1510, which grants amnesty or legalizes millions of illegal aliens. The costs of amnesty are unclear because it is impossible to know how many illegal aliens will take advantage of this program.

The CBO estimates the number of illegal aliens to be 4½ million; Justice Department estimates vary from 8 to 10 to 12 million illegal aliens.

Obviously, the cost will be astronomical. These costs will have to be absorbed by the Federal, State, and local Governments, which are already subject to enormous pressures to cut their budgets and reduce spending. These additional costs could bankrupt some jurisdictions.

It has been said the costs of the amnesty program are overstated because a substantial number of illegal aliens will not take advantage of amnesty. If this is the case, then legalization should not be enacted because it will be ineffective and won't solve the problem of illegal aliens.

Today I am addressing some of the problems that I see. Very briefly, this includes problems under a total cap for immigration.



It limits fifth preference to unmarried brothers and sisters of U.S. citizens. It deals with the illegal alien problem by moving the registry date from 1948 to 1973 so we can see how this 25-year advance in the registry data affects our illegal alien problem.

Furthermore, my legislation addresses the problem of employer sanctions in a meaningful way by establishing a fine of up to \$20,000 for repeat offenders.

In conclusion, I would hope that the United States could continue as much as possible its open door policy toward the displaced, the persecuted, and the ambitious of the world. However, our economic and resource situation dictates that business as usual cannot continue.

Meaningful immigration reform must be accomplished and I am hopeful that this Congress will accomplish such a reform.

[The complete statement follows:]

PREPARED STATEMENT OF F. JAMES SENSENBRENNER, JR.

Mr. Chairman, I appreciate the opportunity to testify before the House Judiciary Subcommittee on Immigration, Refugees, and International Law on the important issue of immigration reform.

Before getting into specifics, I would first like to commend the Chairman for his diligent and sincere efforts on this issue. It is my sincere hope that any immigration reform legislation will be the kind of reform that will truly satisfy the American public.

As a member of the Judiciary Committee, I have been closely following U.S. immigration policy for the last four years. It is an understatement to say I have been less than pleased with our policy or legislative attempts at reform, i.e. the Refugee Reform Act of 1980. My frustrations over our immigration policy reached its highest level after visiting Ft. McCoy in northern Wisconsin. Ft. McCoy was one of the refugee camps where Cuban-Haitian entrants detained until sponsors could be found. The visit proved to be a real "eye-opener" with regard to the lack of planning, coordination, and foresight by the federal government. The Ft. McCoy experience clearly showed the inadequacy of our immigration laws relative to refugees.

It is this experience which convinced me that any immigration reform legislation must contain a provision which places a cap on legal immigration which includes refugees.

One of the major criticisms the American public has with our present immigration law is that we have "different strokes for different folks." If a cap on legal immigration is not enacted, then the current number of legal immigrants entering our country will continue to mushroom. In 1977, legal immigration was 399,000. In 1980, it was 808,000. In 1981 it was 697,000. While the present administration has made a determined effort to reduce these numbers, there is no law which places a limit on the number of legal immigrants, including refugees, which our country will accept.

The increasing number of legal immigrants have entered our country at a time when there have not been enough jobs to go around for our own citizens. "Compassion fatigue" has set in. Americans are having a difficult time understanding why our government continues to allow more people in this country who compete for jobs and place a drain on the treasuries of our state, local, and federal governments. Public opinion polls show that 80 percent of the American people want reductions in legal admissions.

The lack of a cap on legal immigration goes hand in hand with the method of allocating immigrants other than refugees. H.R. 1510 retains the current system and does not limit the 5th preference. Currently, there is a 5th preference backlog of over 700,000, which is continually growing. Less than one-half of this backlog are the actual brothers and sisters of U.S. citizens. The rest are spouses and children of these brothers and sisters. If the 5th preference is not modified, then closer family members will continue to have problems being united. If family reunification is to be a preferred public policy, it should be for the closest relatives—not a loophole to bring "every relative" into the country.

Any immigration reform legislation must include strong employer sanctions. They need to be strong to burn off the economic magnet of jobs. The employer sanctions in H.R. 1510, which is basically the legislation which was reported out of the House

Judiciary Committee in the 97th Congress, were considerably weakened. Thus, without some type of economic deterrent, illegal aliens will continue to be a problem.

I have serious reservations about the provision in H.R. 1510, which grants amnesty or legalizes millions of illegal aliens. The costs of amnesty are unclear because it is impossible to know how many illegal aliens will take advantage of this program. The CBO estimates the number of illegal aliens to be 4½ million; Justice Department estimates this number to be 6 million; and other estimates vary from 8 to 10 to 12 million illegal aliens. Obviously, the cost will be astronomical. These costs will have to be absorbed by the federal, state, and local governments, which are already subject to enormous pressures to cut their budgets and reduce spending. These additional costs could bankrupt some jurisdictions.

Aside from the costs, amnesty is a bad precedent. It shows our country is not serious about our immigration laws. Additionally, there is the fear that the Supreme Court decision of *Plyler, Superintendent, Tyler Independent School District et al. v. Doe, Guardian*, which forced the state of Texas to provide free education benefits to children of illegal aliens, will be extended to include other benefits. This is yet another incentive for a family to move illegally into the United States.

It has been said the cost of the amnesty program are overstated because a substantial number of illegal aliens will not take advantage of amnesty. If this is the case, then legalization should not be enacted because it will be ineffective and won't solve the problem of illegal aliens.

To address these and other problems, I will reintroduce today the Immigration Reform Act which in the last Congress, with a few changes, was H.R. 4162.

The Immigration Reform Act address the problem of a cap on legal immigration, the 5th preference, employer sanction, and amnesty.

The Immigration Reform Act addresses the problem of a cap on legal immigration the 5th preference, employer sanction, and amnesty.

This legislation requires the President to send to Congress by July 1st each year, a proposed immigration plan to take effect within 30 calendar days unless each House of Congress passes a resolution stating its disapproval. It also provides for a numerical limitation on legal immigration of not less than 300,000 nor more than 420,000. A special provision relating to emergency refugee situations makes this a flexible ceiling.

The Immigration Reform Act limits 5th preference to unmarried brothers and sisters. Additionally, it provides for strong sanctions against employers who knowingly hire, recruit, or employ any alien who has not lawfully been admitted to the U.S. A fine of \$500 for the first violation and \$20,000 for subsequent violations could be imposed. This legislation would not preempt state or localities from the adoption and enforcement of laws prohibiting or restricting the employment of aliens in the U.S.

Finally, this legislation deals with the illegal alien problem by moving the registry date from 1948 to 1973.

Moving up the registry date has several advantages over the amnesty. First, INS is familiar with the procedures and paperwork. Additionally, an alien who desires this relief must affirmatively come forward. Third, registry would be available for all aliens who show good moral character and continuous residence since 1973. Thus it would be difficult for an alien to provide fraudulent papers. An alien who has been here for 10 years is better assimilated in our country. The registry date could periodically be updated in an effort to better deal with this problem.

Mr. Chairman, these provisions are only the highlights of my legislation. I have here a summary of the Immigration Reform Act, which I would like to appear in the hearing record following my testimony.

In conclusion, I would hope the U.S. could continue, as much as possible, its "open door" policy toward the displaced, the persecuted, and the ambitious of the world. However, our economic and resource situation dictates that business as usual cannot continue. Immigration reform must be accomplished.

Mr. MAZZOLI. I thank you very much, Jim, for that interesting testimony. I yield myself 5 minutes for some general observations.

The idea of a cap is not new. It was proposed as an alternative in our discussion, last year. Your number of not less than 300,000 nor more than 420,000 puts the upper range of 420,000 in the category of the numbers coming in now—the preference system of 270,000 plus about 150,000 coming in as immediate relatives.

So if I understand this cap correctly, which includes both refugees and immigrants, you have what I have heard characterized as



an unseemly struggle between family members and refugees for these available slots.

Now, perhaps you can help us for a few minutes. Do you see that struggle ensuing? Do you think that it is not a correct characterization of the total cap on entry into the country legally?

Mr. SENSENBRENNER. I don't see that it is an unseemly struggle. What I wish to avoid is what happened in 1980 when we had the preference immigrants, the family reunification plus over 200,000 refugees, plus over 130,000 Cubans who were put kind of in a legal limbo status of applicants for political asylum.

Under the present system, there is no ceiling whatsoever on the number of legal immigrants that we allow into this country. It just depends upon what slot you are able to fit yourself in.

Any true refugee reform has got to have that kind of a cap, and when there is a crisis due to an exodus from a place like Vietnam or Haiti or Cuba, then I believe that there has got to be some kind of compensation in reduced numbers of the legal immigrants under the preference system. That is something that I think should be left flexible and should be left to the administration that is in power at the time.

If there is a need, then Congress and only Congress should increase the 420,000 number cap either on a temporary basis or on a permanent basis. I just think that we as the people's elected representatives should have the final say on this subject rather than having the present leaky system that allows the administration to bring in unlimited numbers through a consultation process, but which does not give us a vote on the subject.

Mr. MAZZOLI. Let me ask you this, Jim. I think you said in our debates last year that if the gentleman from Kentucky and the gentleman from Wyoming remained as chairmen of these immigration subcommittees, you would not be quite as concerned about the consultation process. But you are looking to institutionalize what, in essence, is a legislative veto, to be sure the Congress has the final say.

Mr. SENSENBRENNER. Well, I would just point out that the distinguished predecessor of the gentleman from Kentucky, who is no longer with us, was someone who could not say no, and therein lay some of the problems in 1979 and 1980.

Mr. MAZZOLI. Well, just to make the record, from 1980 fiscal year when 212,000 refugees were admitted that number has gone down 159,000 in 1981, to 90,000 last year, to a ceiling of 90,000 this year. And next year the administration is talking in a range of 70,000 to 80,000.

So the consultation process has engaged itself. I think it has, in part, because there is a sword of Damocles hanging over it, which is the presence of a potential legislative veto. But I think also because both sides, the Congress and the administration, have become more attuned to what really are the needs of a refugee program, which is not just moving people in but resettling those people in jobs they can handle.

Mr. SENSENBRENNER. And in places other than south Florida or southern California.

Mr. MAZZOLI. Or Ramsey County, Minn., I guess.



Let me perhaps ask one more thing, Jim. You suggest that there be not a legalization program as we define it, but a change of the registry date; is that your thought?

Mr. SENSENBRENNER. Yes.

Mr. MAZZOLI. To use the registry date that we adopted last year, 1973?

Mr. SENSENBRENNER. Yes. My proposal does advance the registry date from 1948 to 1973. I fear the consequences of a blanket amnesty or legalization of present illegal aliens.

Mr. MAZZOLI. Do you see ours as a blanket?

Mr. SENSENBRENNER. Yes.

Mr. MAZZOLI. Even though it is a case-by-case study?

Mr. SENSENBRENNER. Even though it is a case-by-case study.

First of all, I don't think that a substantial number—meaning over 50 percent of the total number of illegals who would be eligible—would apply for legalization.

Second, I am concerned with that kind of a legalization program coupled with no change in the fifth preference status. In 5 years and 10 years from now, the flood gates would be open for practically unrestricted immigration of the brothers and the in-laws and the in-laws of the in-laws as more people become U.S. citizens and take advantage of the current fifth preference law.

Legalization plus fifth preferences will give the double whammy to a law that is well-intended to control immigration, but, in fact, will not control immigration and will increasingly fail in its stated goals as more people become eligible under the current fifth preference status.

Mr. MAZZOLI. Well, my time has expired. I guess I look at it somewhat differently. I look at ours as not a blanket amnesty but a legalization in a case-by-case approach.

I, of course, did originally, as the gentleman notes, support a change in the fifth preference to strike it prospectively, clearing the current category. That, of course, in the wisdom of the full committee last year, was taken out of the bill.

One thing about the fifth preference, of course, to be noted is that it is only 24 percent of the total number of 270,000. So if a legalization program worked for these people, who became permanent residents and then citizens, they could petition under the fifth preference for brothers and sisters. But they would just stand in a longer and longer line. The pressure might build up for some to sneak in, but the truth of the matter it is not an unlimited category.

Mr. SENSENBRENNER. I am aware of that. Presently a 700,000 person backlog in fifth preference. This backlog will increase with legalization making more people eligible to bring their brothers and sisters and spouses and children in.

The pressure will then be on the Congress to increase the 24 percent or to bring the backlog in rather than having people wait for year after year, particularly in embassies where a large number of people who are legalized have originally come from, specifically Mexico, Haiti, other Central American nations.

Mr. MAZZOLI. Thank you very much, sir.

The gentleman from California.

Mr. LUNGREN. Thank you, Mr. Chairman.

First of all, I ask unanimous consent for the subcommittee to permit coverage of this hearing by radio broadcast, television broadcast and still photography.

Mr. MAZZOLI. It is so ordered, without objection.

Mr. LUNGREN. Jim, welcome to this continuing round of discussions on what we ought to do about the immigration situation that we find ourselves in. I know that you came to Congress the same time as I did with some interest in this issue, which was not being dealt with at that time. I appreciate your continuing interest in it.

We do have some differences of opinion on some of the major factors here.

Let me just ask about your question on the legalization program that is in this bill. You do believe that we ought to move the registry date up to 1973, but nonetheless that would leave us with a question of substantial numbers of illegal aliens who have come to this country since 1973 and up to 1980, a category that would be taken care of under the legalization program in the bill.

What do you suggest we do with these individuals, particularly in the context of the penalties that would be taken against employers that only refer to prospective employment? That is, under the bill as it came out of the committee, or as it recently came out of the subcommittee and introduced, only deals with prospective employment.

Mr. SENSENBRENNER. There are two things that attract illegal aliens to the United States. One is a better standard of living and the potential eligibility for U.S. welfare benefits. The second is jobs and the cash that is paid.

If we are ever to get control of our borders, we are going to have to get at those two things that act as a magnet to draw people into this country, or convince people who have entered legally to overstay their visas and simply not go home.

I am not sure that the amnesty program contained in the subcommittee's legislation will be effective. I also think that there should be some kind of review to make sure that these people are of good moral character and have not been leading a life of crime, including organized crime, while they are in this country.

Mr. LUNGREN. That would be taken care of under the committee version?

Mr. SENSENBRENNER. Yes. It also would be taken care of under the advancing of the registry date version because the registry date is a program that has been utilized in the past and utilized successfully in the past. Rather than doing it almost all in one fell swoop, which either the 1977 or 1980 date would accomplish, I would be in favor of subsequent advances of the registry date from its 1973 period if going from 1948 to 1973 works.

We have a program on which we have got a track record. I think we should see how well advancing the registry date works.

If it works well up to 1973, then we should advance it perhaps two years at a time to get to the 1980 date that the subcommittee has suggested with their program, but I don't think it should be done all at once.

Mr. LUNGREN. Well, let me ask you two things about that.

First, you know how difficult it is for us to get any meaningful legislation on immigration through the Congress, given how reluctant the Congress is to act on this whole issue.

There are some that argue, including myself, that we have got an opportunity to enact a comprehensive package now. We had better take this opportunity, and clear out or wipe the slate clean with respect to those many illegal aliens who have come in up until 1980, because we were not enforcing the law. Otherwise we will always have that permanent underclass here, and even though we may move up the registry date on a regular basis, you are still going to have the group.

And wouldn't it be better to take care of that situation now and henceforth make it the policy of the United States that we will, in fact, enforce the law. Those that come over here should not entertain any prospects of us having a future amnesty or legalization program because we have been generous to the point of acceptance and tolerance of the American people.

Mr. SENSENBRENNER. That would be fine if we had the border patrol and INS personnel to enforce control over our borders and to stop the flow of illegal aliens postpassage and signing of this bill. We don't have that, and I think we all recognize we don't.

Regarding amnesty, I think the wrong message is being sent south of the border. That is, if you sneak under the fence and are able to stay here for a given period of time—3 years has been proposed—then you become a permanent resident, and 5 years from now you will become a U.S. citizen.

However, the Mexican who wanted to obey our laws applied for a visa to enter the United States at the Embassy in Mexico City and has been sitting around for an excess of 10 years waiting for his number to come up. He is told he is out of luck.

Now, what kind of message we are sending south of the border? I think it is the wrong message.

Point No. 2, comprehensive legislation is fine. I think there were too many straws on the camel's back. It was a little too comprehensive in the last Congress. That is why it never did get passed late in the session.

For example, there are a number of us that will not vote for legislation that contains a blanket amnesty. We are strange bedfellows with other folks who object to the employer sanctions provision in the bill, and perhaps splitting this thing up might be a little bit more effective.

Mr. MAZZOLI. The gentleman's time has expired.

While the gentleman from New York gets his bearings here, let me yield myself a couple of seconds.

Again, with great respect to you, Jim, I really do not think ours is a blanket amnesty; unlike the kinds of blanket entries that were permitted from Southeast Asia, blanket statements that all people who left a country were, per se, refugees entitled to entry into our country.

We have a situation in our bill where everyone has to be examined. They have to be screened against all the exclusions that are in the Immigration Act on a case-by-case basis. We may differ on that point.



One of the things that has led us not to accept a change in the registry date as the only kind of legalization program is the test of whether a person would qualify under a change of registry date is less stringent than the test applied to people under the legalization.

The test under legalization in our bill is a list of exclusions, including public charge. The tests applied to those coming in with the change of registry is just four simple points, and we think they might be more inclusive than they really need to be.

Another reason that we have been chary about going to the registry change is because there has been a question raised, and you have raised it yourself, about the cost of legalization—the amount of people who would go on some kind of welfare or relief. If we understand the registry language, people who would go on to relief, having been legalized through the change of registry, would probably not have those welfare payments borne by the Federal Government. Under the subcommittee bill, we do particularly say that States and localities have an opportunity to recover some of their costs, whatever they might be from a reimbursement program.

If we are wrong about those legalized, if these people do become takers rather than givers, then it is our belief that the States ought to be protected. And a change of registry date may not afford that kind of protection.

That is one of the reasons for going for our kind of a program here.

The gentleman from New York?

Mr. FISH. Thank you.

Mr. MAZZOLI. The gentleman from Wisconsin indicated he has got a 9:30 meeting, so we have just about 5 minutes.

Mr. FISH. Two minutes. I have a 9:30, too.

I understand from your testimony that employer sanctions in H.R. 1510 were considerably weakened. Would you care to suggest changes for these provisions that you favor?

Mr. SENSENBRENNER. The bill that I will introduce this afternoon has a \$500 fine for the first offense and a \$20,000 fine on the employer for each subsequent offense. I do think we ought to throw the book at employers who knowingly hire illegal aliens and usually pay them in cash and do not deduct the withholding and social security taxes that are prescribed by law.

While I supported the employer sanctions in the Judiciary Committee reported bill of the last Congress, I had the distinct impression that there was a paperwork burden and the establishment of defenses that, No. 1, made the employer the policeman rather than the government the policeman.

No. 2, allowed any clever lawyer who believed in the maxim of when your client is guilty, you delay and delay to do just that, to prevent the actual criminal sanctions from accruing after going through the citation and the warning to the civil sanction to the criminal sanctions.

I would hope that when we deal with the subject of employer sanctions in this Congress we would reduce the paperwork burden. We would have the government do more of the policing of this and we also would accelerate the penalties so that there would be more than a tap on the wrist after the first offense.

Mr. FISH. Finally, as part of your opposition to the legalization program, does that stem from the fact that you believe that strong enforcement of employer sanctions will result in a number of illegal aliens in the United States packing up and leaving?

Mr. SENSENBRENNER. Yes.

Mr. MAZZOLI. The gentleman from California.

Mr. LUNGREN. You mentioned the question of the legalization program and your related concern about increased border patrol and so forth. We have recognized that shortcoming of the bill, and I think you are going to see us authorizing in this legislation increased border patrol enforcement.

Mr. SENSENBRENNER. I certainly support that, and I also would hope that the INS would not continue to be treated as a stepchild over in the Justice Department.

I know that every time the Attorney General, regardless of who he may be, appears before our committee, our committee has been unanimous in suggesting that the INS be computerized. Somehow those pleas have fallen on deaf ears.

Mr. LUNGREN. Well, they are going to have computerization. One of the things they pointed out to us yesterday when we registered the criticism that even though this committee authorizes, the Congress does not appropriate the funds necessary. So it is not only INS being the stepchild of administration whatever that is; it has been the stepchild of Congress.

Mr. SENSENBRENNER. Thank you.

Mr. MAZZOLI. Thank you very much. We appreciate your help.

We now welcome two of our colleagues from Texas, Congressman Kazen and Congressman Ron Coleman.

Gentlemen, any statements you have will be made a part of the record. You may read them or speak from them. I would suggest that maybe both of you go on, and then the gentleman from California and I will ask some questions.

I recognize in order of seniority and probably in order of good looks and charm and savoir faire, Mr. Kazen, you are deferring to Ron? That is what you told me to say, Chick.

#### TESTIMONY OF HON. ABRAHAM KAZEN AND HON. RONALD COLEMAN, MEMBERS IN CONGRESS FROM THE STATE OF TEXAS

Mr. KAZEN. You said it just exactly like I asked you to, Mr. Chairman.

Good morning, Mr. Chairman. I don't have a prepared statement. As you know, we have been working on this problem for years and years and years.

The one point that has always been the problem has been employer sanctions. Ever since I came to Congress 18 years ago, Peter Rodino has been working on this type of a bill.

Through the years, of course, it has been known as the Rodino bill. I understand now that the gentleman from Kentucky has the distinction of having this bill named for him.

I want to commend you, Mr. Chairman, and your subcommittee for the work that you have done. I don't agree with everything that you have done in the past. I am not going to pass judgment on what you are bringing out in this session. I think that you have



been flexible enough to where you have recognized some of the things that needed to be adjusted.

You have just heard from the previous witness and you have agreed with him on several things. But employer sanctions are the thing that has always worried me.

I come from a part of the country which is, of course, adjacent to Mexico. Let's not kid ourselves: This bill is aimed more at Mexico than any other country. We are affected more by illegal aliens from Mexico than from any other country because of the ease with which those people have access to this country.

I am afraid that in the future, Mr. Chairman, it is going to even get worse. You are well aware of the situation: The economic situation in Mexico now where the monetary system has literally gone to hell; where the exchange is now 155 pesos to \$1; where the entire border area has been completely depressed; where we have unemployment at the rate of 38 percent in one of the cities that I represent, Eagle Pass, right on the border. My own city of Laredo on the border has now a 28-percent unemployment rate simply because of the economic situation across the river in Mexico.

I am afraid that that retail business is never going to come back. I don't think that Mexico can recover fast enough to avoid a lot of the pitfalls that I worry will be the result of this bill.

The legalization of these people—you know I asked, and here I am going to ramble a little bit, because as these things come to mind, I just don't want to forget them. I asked Chairman Rodino during the debate last year what he was going to do or what the committee intended to do in the future on amnesty. Here we have a bill that will give amnesty to people that have been here since a particular date.

What are we going to do in the future? Are we periodically going to provide amnesty for illegal aliens that happen to be here?

Now, I am not saying that illegal aliens are bad, per se, that they are bad people, that they are criminal types. Nothing could be further from the truth. They are honest, hard-working people who want to look after their families, who want a better way of life.

They don't get it in the countries from which they come, and anything that they can get in this country is so much better than what they have at home. So they are fine people.

I have lived among these people all of my life. Their children have been reared in the United States. They have been very, very good neighbors.

In fact, they tow the line a heck of a lot more than our own citizens do as far as law enforcement is concerned or law abidance is concerned. Their children have gone to war. They have always answered the call of this country, and even when they were not citizens, they volunteered.

I know in my own generation, World War II, we had many volunteers who were not citizens. So that is not the question. They are good, desirable people.

The question is, How are we going to control this stream that is coming in? You are certainly not going to do it by employer sanctions.



When I asked the chairman, "How are you going to do this in the future," he says, "We are not going to have any more." "Mr. Chairman, I don't understand you," I said. "What do you mean?"

He says, "Employers sanctions are going to take care of that. When the word goes forward that they are not going to be hired anymore, they will not come over."

Well, Mr. Chairman, that is just not true. If you were to go right now into Mexico, any part of Mexico, and saw this misery, nothing is going to keep them from coming over. Any job that they can get, any \$1 that they can make is so much better than what they are doing over there, and employer sanctions are not going to keep them out.

This problem is going to continue regardless of what we do, and we've got to recognize it and act accordingly.

Mr. MAZZOLI. And what is acting accordingly?

Mr. KAZEN. I don't know, but some provision has got to be made.

We cannot just open up and say, "All right, amnesty." We know that these people are not going to go back. They have nothing to go back to. They are going to stay here and they are going to do their darndest to be law-abiding people.

But all of these other things that go with it, our welfare programs, the expenditures that local entities, communities, States, and this country has to make, additional burdens that we will have to carry, those things are going to continue, Mr. Chairman.

I don't know what kind of provisions you can put in the bill that will eliminate this.

Mr. MAZZOLI. Well, I do not want to take the time now to question because I want to do it in a structured sense after hearing from Ron.

That is the thing that has plagued us the whole way. If not this, what? If not now, when?

It is a very difficult thing to answer.

Mr. KAZEN. There is one more thing on employer sanctions. I have always worried, coming from where I come from, that the largest constituency I have are Mexican Americans in the Southwest and in my district. They are just as much citizens as you and I. They were all born here. They are legal citizens.

I don't know what type of card you are going to devise. I just hate to see as a principle, and I am sure you do too, Mr. Chairman, and every member of this committee, I don't want this society to become a card-carrying society to where, in the future, a dark-skinned person, anyone who has a foreign accent or speech impediment, immediately puts an employer on notice that he had better ask him some darned good questions and assure himself that that fellow is not here as an illegal alien, where if you, Mr. Chairman, or a blond, fair-skinned man were to go in to ask for jobs, the rest of his life he is not going to be asked those questions.

I know these people, Mr. Chairman. They are awfully proud, and the first thing they are going to say is, "Congressman, why did you allow a bill with built-in discrimination against me, a Mexican-American citizen, to be placed in the law?"

I just want to be awfully careful, Mr. Chairman, that this does not happen because every American citizen is proud of his citizen-

ship, and I don't want this to set aside a second-class, card-carrying citizen. That is not the way of life in this country.

There are so many other things, but the time is limited, and as we go along, I will be looking to see how you answer some of these questions.

Lastly, Mr. Chairman, strengthen INS. They are the law enforcement people. Don't make the private citizen the law enforcement person.

Mr. MAZZOLI. We had an interesting session yesterday which alluded to that.

Welcome to Congress, Mr. Coleman.

Mr. COLEMAN. Let me say that I appreciate all of the efforts that you and this committee have made with respect to immigration law reform.

I offer to you today the perspective of a West Texan representing a congressional district and constituency whose interest and problems are inextricably linked to Mexico, a district that is clearly affected by the legislation considered and recommended by this committee and subcommittee.

El Paso, Tex., the largest city in my district, shares the border with Ciudad Juarez, Chihuahua, Mexico, and these cities have a combined population approaching 2 million.

America is a Nation of immigrants. The richness of our culture is a result of our ethnic diversity and is the foundation of our democracy. But our fine traditions are periodically tainted by discrimination against certain races, groups, or political opinions.

I support effective immigration reform legislation that addresses both the general problems of unemployment and the specific individual needs of our Nation's citizens and those applying for citizenship. With Simpson-Mazzoli as the vehicle for immigration reform, I would like to address those provisions of H.R. 1510 which are of the greatest interest to the people of my district.

First, I am concerned about certain provisions in the bill that could potentially discriminate against the Hispanic community and other American citizens. Mexican American groups in my district have also raised this issue with respect to employer sanctions.

The Immigration and Naturalization Service's Operation Jobs is a case in point. An organized series of raids on different workplaces across the country resulted in the arrests of thousands of undocumented workers.

Unfortunately, it also resulted in the arrests of American citizens of Hispanic descent and the harassment of business owners and their patrons.

American citizens brought a class-action suit against the INS in the Federal district court in El Paso, which resulted in the imposition of an injunction on the Service for similar types of raids.

I think it is important, therefore, that any bill being considered by this committee contain language expressing the intent of Congress that nothing contained therein shall be construed as permitting violations of equal protection guarantees of the 14th amendment and civil rights laws.

I commend the chairman for including sections which provide for monitoring and enforcement by the Civil Rights Commission, the Attorney General, the Secretary of Labor, and the Chairman of the

Equal Employment Opportunity Commission, but I believe that the above-described language must also be included. I think citizens seeing it up front in black and white works.

Addressing the issue of employer sanctions, I agree with the concept of removing the financial incentives for undocumented workers to seek employment. We should mandate that our law precludes discrimination. The same employment criteria required for Jose Luis Sanchez, job applicant, should be required of Ron Coleman, job applicant.

I would like to point out that there are existing laws and regulations which, if strictly and fairly enforced, would have the same impact as employer sanctions. By enforcing our wage and hour laws, stricter monitoring and enforcement of the withholding of social security and income taxes, stricter control over the issuance of social security cards, driver's licenses, and birth certificates, we can discourage employers from hiring undocumented workers.

If we cannot enforce the present laws, how can we honestly say that employer sanctions, whether they be civil or criminal, can themselves be enforced?

There is no question we need a deterrent, but criminal penalties are not needed. Internal Revenue Service criminal sanctions, if applied, are universally recognized deterrents.

I would like to turn to another major area of concern to the people of my district, the issue of legalization. Opponents contend that adjusting the status of aliens who can establish entrance prior to January 1, 1977, punishes those who have been waiting legally for years.

Congress has historic precedent for the granting of legalization. There currently exists the mechanics which will effectively, fairly, and humanely legalize those undocumented aliens, who by virtue of their long residence in the United States, their contributions to our economy and society, should be brought within the mainstream of American.

For example, section 244(a) of the act provides for suspension of deportation to those undocumented aliens who have resided in the United States for 7 years, who can establish good moral character, and who can demonstrate that "extreme hardship" to themselves and citizen or resident family will occur if they were to depart.

Judicial and administrative interpretations have nearly eliminated this remedy. We could provide a meaningful and controlled means of granting relief by eliminating or clearly defining the requirement of extreme hardship, by eliminating congressional approval on the granting of such relief, with administrative review by the immigration courts only when denials occur.

Family reunification should be a primary objective of any immigration legislation. I would suggest placing spouses and children of legal permanent residents in the immediate relative category section 210(b) of the Immigration and Nationality Act. This change would rectify the current situation in El Paso where legal permanent residents must maintain two households, one in El Paso and one in Ciudad Juarez, because of the 10- to 11-year wait for visa availability.

Their options are limited to being separated from family members or to bring in family members illegally. Placing family mem-



bers within the immediate relative provisions of the act would have the dramatic effect of reducing the backlog in the other preference categories.

I would like to discuss the issues facing the executive branch; namely, jurisdiction over political asylum decisions, a guest-worker program, and border control. We need to recognize that the granting of political asylum should be within the foreign policy jurisdiction of the executive branch.

These decisions are purely political and should not be transferred to a new administrative board. Rather than restrict the judicial and administrative review by creating an entirely new body of immigration judges, let's return the primary jurisdiction of political asylum to the State Department.

If Congress determines that the judges within the Department of Justice should continue to make decisions concerning asylum, why create another body unless it is for the purpose of preventing judicial review?

I deeply appreciate the inclusion of a revised guest-worker program in the bill—a program that safeguards American jobs while easing the regulatory burden on small farmers and ranchers in west Texas.

I hope the United States has learned from the mistakes of its bracero program, and I would want to insure that temporary workers are afforded basic health, housing, and wage guarantees.

I wholeheartedly endorse the increase in the border patrol and other enforcement activities of the Immigration and Naturalization Service. In order to facilitate those activities, I support the recommended increase in the annual authorization for enforcement personnel.

With respect to U.S. foreign policy goals, I would never suggest letting the economic conditions of another country dictate our immigration policy. However, we must recognize that those conditions exist.

We are in a unique position, as the United States is the only major industrialized democracy that shares a common border with a developing country, Mexico. As such, we can set an example for other nations to follow, and work with our neighbors in implementing a comprehensive and realistic immigration reform law.

Lastly, Mr. Chairman, I would like to reiterate my support for immigration reform. It is a vital part of both our domestic and foreign policies.

I appreciate your attention to the views of the people of west Texas who live with this situation daily.

At this time, I would like to request your permission to supplement the record with additional views of my constituents.

Mr. MAZZOLI. I appreciate that very much, Mr. Congressman. We welcome that at any time and this statement is a part of the record, of course.

[The complete statement follows:]

PREPARED STATEMENT OF CONGRESSMAN RONALD D. COLEMAN OF TEXAS

Mr. Chairman, thank you for the opportunity to appear before this subcommittee. I certainly appreciate the efforts you and the distinguished members of this subcommittee have taken in addressing the important question of immigration reform.

I offer to you today the perspective of a West Texan representing a congressional district and constituency whose interests and problems are inextricably linked to Mexico, a district that is clearly affected by the legislation considered and recommended by this subcommittee. El Paso, Texas, the largest city in my district, shares the border with Ciudad Juarez, Chihuahua, Mexico, and these cities have a combined population approaching two million.

America is a nation of immigrants. The richness of our culture is a result of our ethnic diversity and is the foundation of our democracy. But our fine traditions are periodically tainted by discrimination against certain races, groups, or political opinions.

I support effective immigration reform legislation that addresses both the general problems of unemployment and the specific individual needs of our nation's citizens and those applying for citizenship. With Simpson-Mazzoli as the vehicle for immigration reform, I would like to address those provisions of H.R. 1510 which are the greatest interest to the people of my district.

First, I am concerned about certain provisions in the bill that could potentially discriminate against the Hispanic community and other American citizens. Mexican-American groups in my district have also raised this issue with respect to employer sanctions.

The Immigration and Naturalization Service's Operation Jobs is a case in point. An organized series of raids on different workplaces across the country resulted in the arrests of thousands of undocumented workers. Unfortunately, it also resulted in the arrest of American citizens of Hispanic descent and the harassment of business owners and their patrons. American citizens brought a class-action suit against the INS in the federal district court in El Paso which resulted in the imposition of an injunction on the Service for similar types of raids.

I think it is important, therefore, that any bill being considered by this committee contain language expressing the intent of Congress that nothing contained therein shall be construed as permitting violations of equal protection guarantees of the 14th Amendment and civil rights laws. I commend the Chairman for including sections which provide for monitoring and enforcement by the Civil Rights Commission. The Attorney General, the Secretary of Labor and the Chairman of the Equal Employment Opportunity Commission, but I believe that the above-described language must also be included.

Addressing the issue of employer sanctions. I agree with the concept of removing the financial incentives for undocumented workers to seek employment. We should mandate that our law precludes discrimination. The same employment criteria required for Jose Luis Sanchez, job applicant, should be required of Ron Coleman, job applicant.

I would like to point out that there are existing laws and regulations which, if strictly and fairly enforced, would have the same impact as employer sanctions. By enforcing our wage and hour laws, stricter monitoring and enforcement of the withholding of social security and income taxes, stricter control over the issuance of social security cards, driver's licenses, and birth certificates, we can discourage employers from hiring undocumented workers. If we cannot enforce the present laws, how can we honestly say that employer sanctions, whether they be civil or criminal, can themselves be enforced. There is no question we need a deterrent, but criminal penalties are not needed. Internal Revenue Service criminal sanctions, if applied, are universally recognized deterrents.

I would like to turn to another major area of concern to the people of my district, the issue of legalization. Opponents contend that adjusting the status of aliens who can establish entrance prior to January 1, 1977, punishes those who have been waiting legally for years. Congress has historic precedent for the granting of legalization. There currently exists the mechanics which will effectively, fairly and humanely legalize those undocumented aliens, who by virtue of their long residence in the U.S., their contributions to our economy and society, should be brought within the mainstream of America. For example, Section 244(a) of the Act provides for suspension of deportation to those undocumented aliens who have resided in the United States for seven years, who can establish good moral character, and who can demonstrate that extreme hardship to themselves and citizen or resident family will occur if they were to depart. Judicial and administrative interpretations have nearly eliminated this remedy. We could provide a meaningful and controlled means of granting relief by eliminating or clearly defining the requirement of extreme hardship, by eliminating Congressional approval on the granting of such relief, with administrative review by the immigration courts only when denials occur.



Family reunification should be a primary objective of any immigration legislation. I would suggest placing spouses and children of legal permanent residents in the immediate relative category, section 201(b) of the Immigration and Nationality Act. This change would rectify the current situation in El Paso where legal permanent residents must maintain 2 households, one in El Paso and one in Ciudad Juarez, because of the 10 to 11 year wait for visa availability. Their options are limited to being separated from family members or to bring in family members illegally. Placing family members within the immediate relative provisions of the Act would have the dramatic effect of reducing the backlog in the other preference categories.

I would like to discuss the issues facing the Executive Branch—namely, jurisdiction over political asylum decisions, a guest-worker program, and border control. We need to recognize that the granting of political asylum should be within the foreign policy jurisdiction of the Executive Branch. These decisions are purely political and should not be transferred to a new administrative board. Rather than restrict the judicial and administrative review by creating an entirely new body of immigration judges, let's return the primary jurisdiction of political asylum to the State Department. If Congress determines that the judges within the Department of Justice should continue to make decisions concerning asylum, why create another body unless it is for the purpose of preventing judicial review?

I deeply appreciate the inclusion of a revised guest-worker program in the bill—a program that safeguards American jobs while easing the regulatory burden on small farmers and ranchers in West Texas. I hope the United States has learned from the mistakes of its Bracero program, and I would want to ensure that temporary workers are afforded basic health, housing and wage guarantees.

I wholeheartedly endorse the increase in the border patrol and other enforcement activities of the Immigration and Naturalization Service. In order to facilitate those activities, I support the recommended increase in the annual authorization for enforcement personnel.

With respect to U.S. foreign policy goals, I would never suggest letting the economic conditions of another country dictate our immigration policy—however, we must recognize that those conditions exist. We are in a unique position as the United States is the only major industrialized democracy that shares a common border with a developing country, Mexico. As such, we can set an example for other nations to follow and work with our neighbors in implementing a comprehensive and realistic immigration reform law.

Lastly, Mr. Chairman, I would like to reiterate my support for immigration reform. It is a vital part of both our domestic and foreign policies. I appreciate your attention to the views of the people of West Texas who live with this situation daily. At this time I would like to request your permission to supplement the record with additional views of my constituents.

Mr. MAZZOLI. Let me yield myself 5 minutes. Let me mention, with respect to your statement, Chick, I could not agree with you more that you do not want some segment of America becoming a card-carrying society. We have probably spent more time in this session trying to eliminate unwitting discrimination from this employer sanctions, as anything we worked on in the bill. We have worked very hard.

As you know, it is not clear that it will be a card anyway. It could be anything, including Sam Hall's suggestion of a telephone call-in system as a means of verifying a person's right to work and who they are.

But were there to be some suggestion of some kind of mechanism of identification card or material, it is specified in the bill that it could only be required at the time of employment, not all the time. One of the fears that people have is an internal passport, which we would prohibit.

The second thing is that it is required of everyone. Just like Ron said in the statement, Jose, Louise, Ron Coleman, Mazzoli. In our bill, everybody who applies for a job is required to show this same identification.



Mr. KAZEN. But is it required to be asked of him? That is the problem.

Mr. MAZZOLI. Yes, it is. You have two levels of penalties.

One is for an employer who fails to ask the questions even of a legal citizen. That failure to maintain paperwork for your employers of over four employees is a separate activity which is sanctionable by a \$500 fine. The other activity is if you happen to hire knowingly undocumented workers. That has a separate level of fines.

So we have set up in here what we think is the ultimate protection against an employer deciding that Ron Coleman looks OK so we do not worry about him, and suggest that Ron Mazzoli does not look OK, so we will ask him. That employer, if this bill goes into effect, has to ask both of us for the very same kind of proof of who we are and are we qualified to work.

We tried to avoid this card-carrying image both in the way we have interpreted the law here and also because we say it only has to be done at the time of the contract of employment, not when you are walking down the street. A policeman cannot ask you for that material any time.

We may not succeed, and there is a difference of opinion on how far we have gone, but this committee, I can say, has labored mightily in trying to develop a bill which is fair and balanced.

Chick, let me ask you a question. Again, you said you had not had a chance to think about it much, but you mentioned the terrible conditions across the river in Mexico as providing the kind of pressures and factors which will make the future years even harder than these years are with respect to illegal entry.

You may not yet have formed your opinion on what to do, but if not employer sanctions, which is the remedy which has been suggested by the last four administrations, by the Hesburgh panel, by the task force of the administration that reported in the summer of 1981, the Brookings Institution, almost everyone who has studied the problem, then what? I would ask you, if you do not have your material prepared today, to submit it to us later if you can, of what you think would be the answer, if not employer sanctions.

Is it a guestworker program?

Mr. KAZEN. There may be a combination of things, Mr. Chairman. Let me come back at you with that.

Mr. MAZZOLI. That would be very helpful if you could.

Mr. COLEMAN. My thought is that employer sanctions, in addition to being a tremendous burden on any employer, paperwork, time taken, so on, is not going to work, really. It may deter but it won't work.

Of course, this committee does not have jurisdiction, but something has got to be done to help the country of Mexico. We can't be held hostage to their conditions there, but it is certainly in our interest to see to it that some of these conditions or at least try to help alleviate some of the conditions that cause these things.

I am not saying that the Government of Mexico is not trying. I am saying that they need help, and I think that we in this country ought to help them.

Mr. MAZZOLI. Just a second, Congressman Coleman. One thing that intrigues me, on page 2 of your statement you say that, either as a preamble to the bill or woven into the bill would be the fact

that the intent of Congress is that nothing should be construed as permitting violations of equal protections of the 14th amendment.

Is this another way of suggesting or saying that aliens who are here without papers should receive the very same kind of constitutional protection and due process as citizens?

Mr. COLEMAN. Absolutely, Mr. Chairman.

Mr. MAZZOLI. You definitely agree then with all of the hearings and the long processes.

Mr. COLEMAN. We actually want to streamline them, but we guarantee that any person inside the borders of this country the same guarantees of the U.S. Constitution as we give to our citizens.

Mr. MAZZOLI. Thank you.

The gentleman from California.

Mr. LUNGREN. Thank you, Mr. Chairman.

I welcome both of you here. As one from a State that is very much affected, it is pleasing to me to note that we are getting such a debate in the House of Representatives before this subcommittee on an issue that has been buried for many years in the official Capitol of the United States.

I had looked to direct a question to you on this, Chick. You have indicated that we can't stop the people from coming here; we can have employer sanctions, but we can't stop them.

Jorge Bustamante who is the leading Mexican authority on migratory problems, who has had part of an article appear in the U.S. News and World Report last week, has indicated that he feels that we will not have relief, if that is the word you want to use, from illegal aliens for perhaps 50 years because, he said, of the tremendous distinction of economic circumstances between Mexico and the U.S.

He even indicates that the major problem is not unemployment in Mexico, but rather an ability of those who could be employed in Mexico to come to the United States and improve their income and standards of living.

He also says—and this is interesting because this is someone from another country who has looked at it from the Mexican perspective—the practice of hiring undocumented workers has made a mockery of American immigration laws.

The United States is the only nation where there is an explicit legal permission to hire those who have violated its laws. An employer can hire undocumented workers without risk of penalty.

Here we have someone from the country that is most involved in telling us that we are the only country in the world that allows this to go on without some penalties to the employers; that is, employer sanction.

With that, I am trying to form a question to you as to whether you reject the possibility of employer sanctions being part of the puzzle or are you just telling us to be careful in the way that we implement it?

In other words, do you think employer sanctions have a role in the effort that we are putting forward to control immigration policy in the country?

Mr. COLEMAN. I frankly don't like employer sanctions period, because it is inevitable as to what will follow.

Mr. LUNGREN. Are you saying discrimination?



Mr. COLEMAN. Yes. And I give you just 3 years, if this bill passes, before you will be working on some sort of a remedy to that situation.

There will be a hue and cry in this country from your minority groups. I know. I live down there; 90 percent of the people—well, not 90, about 70 percent of the people that I know are Mexican-Americans. I have lived with those people. I know their way of thinking. I know how much pride they have and what they are going to be faced with.

Now, mind you, they are not only employees or those seeking work. They are employers. The majority of the businesses down in my district are run by Mexican Americans. They are the ones that are going to feel the lash both ways.

Mr. LUNGREN. Let me just ask you a question on this, because obviously my district and my state is affected. We not only have people from Mexico visiting us, we have a few people from Southeast Asia who have found the climate very nice in my area.

Mr. KAZEN. Yes, you have.

Mr. LUNGREN. What I am trying to get at is this. Are you saying that employer sanctions cannot work?

We have attempted to try and apply it to all people who seek employment. Now, if that is the law of the land and that is, in fact, the way it is interpreted and implemented, how can there be grounds for discrimination?

Mr. KAZEN. What kind of a law enforcement force are you going to have in order to be able to make this work?

Mr. LUNGREN. Let me talk to you about that, about how we are going to reach it from two levels. One is that we are going to have enhanced enforcement in this bill. I think there is an agreement on that part on virtually everyone here on the committee. We feel it ought to be in a bill, an authorization; but, secondly, there is a seal of policing mechanism here.

If, in fact, with the various things we are going to do, with the legalization program and, hopefully, with the guest worker program and so forth, if you take the cloak of illegality of many of these people they then have reason and legal standing to bring actions against the employers who do discriminate against them. Right now, if you happen to be someone here who is illegal, your possibilities for bringing an action against your employer are rather diminished by virtue of the fact that you will expose your illegal status and, in effect, you become a victim in a system which does not allow you to identify your victim status.

Mr. KAZEN. Yes, but what do you do after you identify it? Let's be practical. What do you do after you identify a person as being here illegally? What action is taken? Oh, yes, in some cases they give them voluntary departures. They take them through a court process and report them and things of this kind. But when the courts themselves say that the schools in Texas have to educate the children of illegal aliens or illegal aliens themselves, you are actually saying that they are entitled to be here. And no longer is the discovery or the finding of an illegal alien in and of itself an action for telling them to leave. Illegal aliens are walking the streets now openly.



Mr. LUNGREN. I know that. The courts have not said that. They have always said the U.S. Congress has the ability to control immigration and have suggested that we have not done so. They have thrown the ball into our court and we have not accepted it.

If we don't do this, I know the chairman has asked you what do we do. You are not suggesting an open-board?

Mr. KAZEN. No, I am suggesting better law enforcement and I am suggesting that when you find someone who is violating the law, and certainly an illegal alien has violated the law, that is what the word illegal means, then do something about it. It is not up to the citizen to do it. It is up to the Government.

Mr. LUNGREN. From an enforcement standpoint, what do you think would be more effective, giving the authorities the ability to go to an employer? Let's say they go out there and find he has 100 illegal aliens working for him and we imposed fine of \$1,000 or \$2,000 per violation. Do you think that is more effective than taking them off his grounds where they go across to Mexico the next day and then are back working for him a day later?

Mr. KAZEN. It is a combination of both actually, but you have got to be very careful. The only reason I objected to it is because of the consequences that will result.

Now, if you can devise a system that will not discriminate against Americans, I would say, fine. Let's go. That is the name of the game.

Mr. MAZZOLI. The gentleman's time has expired. The gentleman from Florida is recognized.

Mr. MCCOLLUM. I would like to follow up on the border enforcement. Do I gather from what you are saying that you would like to increase the number of border patrols?

Mr. KAZEN. Very definitely. We are under-manned now and what you are actually doing is asking the private citizen, saying you enforce the laws that this government is supposed to enforce. That is what you are doing.

Mr. MCCOLLUM. I just wanted to follow up to make that clear because there has been a lot of discussion in our subcommittee, not just about employer sanctions, not if, and, or, but a supplementary concept; in other words, a very strong feeling that we ought to be doing more here to beef up the patrol and the border itself. I am glad to hear you say you support that. Ron, do you also support beefing up the border?

Mr. COLEMAN. Yes, sir, but I want to make a distinction between Mr. Kazen's and my position. I happen to agree that you are not going to have enforcement of immigration policy in this country by beefing up border patrol. Marines can stand arm to arm along the border and that will not stop the flow of undocumented workers into this country.

I would just add to my statement that if we were to consider sanctions which I have suggested in my district, and many in my district had suggested that we start out with civil sanctions rather than criminal penalties. If we decided that that is insufficient, we will pass a bill and add criminal levels.

I hate to add another level of criminal sanctions to the court, especially the one court that I have serving 1½ million people, and I think it is a problem.

Mr. McCOLLUM. So, you favor the version of employer sanctions that you present today?

Mr. COLEMAN. Yes. The only mistake was when he said that we are the only country that does not have any statutes. That is really a mistake, and we do. That is why I praise this committee's work on the guest-worker concept. I think there should be withholding. There should be IRS enforcement of the laws that we do have on the books and I am convinced that IRS sanctions are realistic and widely understood by employers.

Mr. McCOLLUM. Last year several months ago, now one of your colleagues from Texas had a long private discussion about this aspect apparently, from what I read in your testimony, and I apologize for not being here for the live presentation, was not covered and that is he had a great fear of the magnetic effect of bringing legalization or amnesty up as close as we do to this bill for the present time, a fear that would draw many more across the border in hopes of gaining from it which might not occur if the date were further back. Do you have any thoughts about that aspect of the whole problem of legalization?

Mr. COLEMAN. Yes, I do, and I have heard that same concern from one of my colleagues from Texas that, indeed, we may be accelerating it much too fast. I want to say to you that if we did what I wanted to do and that is eliminate extreme hardship and those words of art, if we eliminated them, I think we would go a long way toward resolving some of the problems that they are concerned about.

Indeed, I think some very dramatic things would happen if we could put children, for example, and spouses in the definition of legal permanent residents in the immediate relative category of section 201(b). I think we do the things that we ought to be doing as a Nation. And please let's not all lose perspective either.

When the chairman asked me a question a minute ago about guaranteeing constitutional rights to undocumented workers and illegal aliens in this country, these are international and I know that this committee is fully aware of that and that it is totally an international issue.

I have had discussions with the President in the city of Juarez and will tell you what they are.

Mr. McCOLLUM. Are you suggesting that if we adopted some of the ideas we presented today, that maybe we would not need to, or you would not think we should have a legalization date as current as we have in the proposed bill?

Mr. COLEMAN. I would say to you that you might not need one as current, that is correct.

Mr. McCOLLUM. Thank you.

I yield back to the chairman.

Mr. KAZEN. Let me, Mr. Chairman, associate myself, if I may, with the idea that Mr. Coleman has suggested. If you are to have employer sanctions, let's start out with civil sanctions.

Mr. MAZZOLI. If the gentleman would yield, I think that basically in our bill we do that.

In other words, we have a 6-month education period. Then we have in the House version of the bill a guaranteed first bite. That

first bite could come 1 day later or 1 year later, but every employer is guaranteed the first bite.

Mr. KAZEN. I would make it more than that first bite, Mr. Chairman, because eventually——

Mr. MAZZOLI. In other words, it is just a warning with that first bite and then you start the civil penalties, and then you start criminal penalties. So by the time you get to the criminal, Ron, you would have pretty much established your desire and determination to mess around with the law. You cannot possibly just have backed into a criminal category. You have to willingly go into that territory.

I am sorry. I did not want to cut you off. It is a measured, progressive situation which will only ensnare the people who really have mischievously and intentionally tried to hire undocumented people and knowingly hired them.

Mr. KAZEN. Mr. Chairman, you are going to find out that regardless of what the popular conception is, there are not too many employers who mistreat illegal aliens. I have heard about this business of working them all week and then when it comes time to pay, they call in the immigration people and say, hey, pick them up, and they take them across the river and they don't get paid.

Mr. MAZZOLI. Yes, I understand.

Mr. KAZEN. In my opinion, I have not seen this and I have been on the lookout for it.

Mr. MAZZOLI. I am sure.

Mr. KAZEN. They may be underpaid in some instances, but the majority of them are now under minimum wage, they are all abiding by it.

Mr. Chairman, if you will, just for 1 second, let me give you an example of what I am talking about. In the agricultural area, and I come from an agriculture district, last summer I went through my district on a real hot day and south Texas can get hot, Mr. Chairman, 102 and 103 degrees. They were harvesting watermelons and I went by to pick up the watermelon from the field and I was talking to the owner of the place and he was working together with a bunch of field hands. I said, Jake, how is it coming? He says, you see that field over there, I didn't pick one single melon from it. They are all burned. The sun just burned them and I could not get enough people to pick them. I said, what about this? He said, whatever I get and every dime I have it in is in the ground, in that fruit, whatever I can get back, I am going to get back today because what is not picked by tomorrow is also going to be burned. I said, well, what about these people here. He said, I will tell you what I did. I went into town, into San Antonio, which is the biggest metropolitan area in south Texas and he was in a place about 50 miles away. He said, I put out the word that tomorrow morning at 5 o'clock I am going to come by here with two trucks. I am going to hire as many hands as I possibly can at minimum wage. I am going to transport them to my place, bring them back. I am going to feed them two meals and I am going to pay them minimum wage. He says, I went by this morning and these were the people I picked up. I say, are there any illegal. He says, I didn't ask. I don't care whether they are illegal or not. I am interested in getting my



money back and I am paying them minimum wage. I am treating them just as humanely as I would an American citizen.

Mr. MAZZOLI. I think the committee has reached the conclusion long ago that the majority of American employers are not only honest, but sensitive to the needs of their employees. There are some who play games and, unfortunately, we have to sometimes craft laws to deal with them, but the majority of the people are straight. We appreciate that.

Mr. KAZEN. One more thing, Mr. Chairman. You will find that a lot of those places in the Southwest, they have people who come in and work for them for about 6 months. They go back to their families and the next year they come right back to the same place. Now, if they were not being treated well, they would not do it, Mr. Chairman.

Mr. MAZZOLI. Gentlemen, I thank you very much. I appreciate it. We will be happy to receive any additional information later.

Mr. KAZEN. Thank you so much for your attention.

**TESTIMONY OF BEN JARRATT BROWN, EXECUTIVE DIRECTOR, ALLIANCE FOR IMMIGRATION REFORM; SAM BERNSEN, WASHINGTON REPRESENTATIVE, AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL; HOWARD KNICELY, VICE PRESIDENT, HUMAN RELATIONS, TRW, ON BEHALF OF NATIONAL ASSOCIATION OF MANUFACTURERS AND THE BUSINESS ROUNDTABLE; ROBERT T. THOMPSON, CHAIRMAN, BOARD OF DIRECTORS, AND CHAIRMAN, LABOR RELATIONS COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES; WILLIAM D. TOOHEY, PRESIDENT, TRAVEL INDUSTRY OF AMERICA; JAMES G. VAN MAREN, DIRECTOR, AGRICULTURAL DEPARTMENT, CALIFORNIA CHAMBER OF COMMERCE; AND GEORGE M. VON MEHREN, VICE CHAIRMAN, IMMIGRATION COMMITTEE, NATIONAL FOREIGN TRADE COUNCIL**

Mr. MAZZOLI. We now welcome and ask to step forward to the table a panel of Ben Jarratt Brown, executive director of the Alliance for Immigration Reform; Mr. Sam Bernsen, Washington representative of American Council on International Personnel; Mr. Howard Knicely, vice president of TRW on behalf of the National Association of Manufacturers and the Business Roundtable; Robert T. Thompson, chairman of the board of the directors and chairman of the Labor Relations Committee of the U.S. Chamber of Commerce; Mr. William Toohey, Travel Industry of America; James Van Maren, agricultural department, California Chamber of Commerce; Mr. George von Mehren, vice chairman, Immigration Committee, National Foreign Trade Council.

Gentlemen, in order for us to proceed with any degree of dispatch, we have to keep to a 5-minute rule for each direct presentation. Then my colleagues and I will ask whatever questions we have.

I guess we will just take you in alphabetical order.

So if we can start, Sam Bernsen, 5 minutes.

I am going to set the clock. You turn into a pumpkin if you continue longer than that.

Mr. BERNSEN. Mr. Chairman and members of the committee, my name is Sam Bernsen. I appreciate the opportunity to appear here as the Washington representative of the American Council on International personnel.

Our members are major business organizations vitally interested in facilitating the movement of international personnel across national borders. ACIP supports immigration reform. In the last session, we endorsed the Simpson-Mazzoli proposals for employers sanctions and we continue to support them. However, several matters are of particular concern.

We strongly favor reform of legal immigration to separate the allocation of visa numbers for independent, immigrants from relatives.

This change is needed to establish a different visa system for the different immigrant categories and to rationally re-define the independent groups in favor of those who would most benefit our country.

The version of the bill passed by the Senate in the last session would do this. It expressly recognizes business professionals and assures that skilled persons and investors are given preference over the unskilled. We believe that any legitimate differences regarding visas should not be an impediment for enacting separate visa numbers to independent immigrants.

On the matter of students, we respectfully submit that the proposed restrictions are based on an erroneous belief that many students are law violators, that they use the opportunity to study here as a foot in the door to remain permanently and take jobs from U.S. workers.

There is no reasonable basis for this belief. The Immigration Service said in the Federal Register on May 28, 1982 at page 23463: "There is little evidence that students violate their entry and stay to a greater extent than other non-immigrants." As to students who would take jobs from Americans, it must be remembered that these jobs are protected by the labor certification requirement. Unless the Secretary of Labor certifies that a worker is not available, the student cannot take the job and remain permanently. It should also be remembered that in the world of scholars, the United States today is the Alexandria of ancient times. Foreign students flock to our great educational institutions to absorb advanced knowledge, fill unused classroom space, and bring foreign exchange. We should not greet them with restrictions and suspicions. If the committee is not persuaded that the restriction should be dropped, we suggest the restrictions at least be modified as set forth in our formal statement to assure that the legitimate needs of the U.S. economy are not ignored.

The efficiency of the present labor certification procedure is universally criticized. What the bill proposes as a remedy is that the Labor Department be allowed to establish comprehensive schedules of certifiable and noncertifiable jobs on the basis of national labor market data without regard to specific job opportunity.

The Labor Department could then rely exclusively on those schedules in determining whether to issue certification. That is what we are concerned about, exclusive reliance on schedules. In today's complex business world, too many jobs are not susceptible

to scheduling. Please be assured that we welcome expanded scheduling as an important facilitative measure, but in all fairness to business, the bill should also mandate an individual certification procedure where the job has special requirements. We have submitted explicit language for this purpose and urge its adoption.

The last suggestion I would like to make is one which has not appeared in any of the legislative proposals—the enactment of a program for facilitation of intracompany transferees. The proposal would save time, expense, and paperwork for the Government and business. Almost 1 year ago, ACIP submitted this proposal to INS. The INS response was decidedly favorable, but we have not seen any implementing action. The growing trend toward creation of joint ventures between United States and foreign corporations makes the proposal particularly timely and useful for inclusion in the immigration reform package.

The views I have expressed have been discussed among other business organizations interested in immigration legislation. I believe you will find that we are in general agreement.

On behalf of ACIP, I repeat its endorsement of the Simpson-Mazoli bill. We hope the bill drafted by this committee will draw on the experience of last year and include changes and take into account the legitimate needs of the Nation's business community.

Mr. MAZZOLI. Thank you very much, Mr. Bernsen. You got us off to a good start within your time limit.

[The complete statement follows:]



PREPARED STATEMENT OF SAM BERNSEN, WASHINGTON REPRESENTATIVE, AMERICAN  
COUNCIL ON INTERNATIONAL PERSONNEL

Mr. Chairman and Members of the Committee:

My name is Sam Bernsen, and I am pleased to appear before you in my capacity as Washington Representative of the American Council of International Personnel (ACIP). Our organization is comprised of major multinational and national corporations and institutions with a vital interest in facilitating the movement of international personnel across national borders. Austin T. Fragomen, Jr., Chairman of the Board of ACIP, has appeared before this committee previously during the 97th Congress to set out the views of ACIP with regard to immigration reform, as embodied in the Simpson-Mazzoli Bill. The opportunity to present ACIP's views to this committee has been a valued one to our members and, I hope, an enlightening one for the members of this committee. I express again today my appreciation for still another opportunity to elaborate on the views of our members with regard to immigration reform and can only hope that the work of this committee will result in enactment of a much-needed revision of the immigration laws in this congressional term.

ACIP has repeated on many occasions, both before this committee and in individual communications to members of Congress, its commitment to reform of the current immigration statute to create a fair, equitable and streamlined system providing for the admission to this country of qualified immigrants and nonimmigrants. As a part of our commitment to immigration reform, ACIP has endorsed the proposals encapsulated in the Simpson-Mazzoli Bill last term for employer sanctions and amnesty for certain undocumented aliens. We continue to believe that the

basic concept of sanctions is a good one that should not be objectionable to members of the business community. As long as the mechanics for enforcing the recordkeeping and reporting requirements included in the sanctions proposal do not put employers in potential conflict with other regulatory schemes, such as Equal Employment Opportunity regulations, the Simpson-Mazzoli proposal represents a feasible and fully acceptable basis for enacting employer sanctions.

#### Reform of the Immigration Selection System: Independent Immigrants

Of the immigration reform proposals that were debated before Congress last term, the one that most concerns ACIP members is the salutary proposal in the original bill for creation of a separate immigration selection category for independent immigrants. The elimination of this proposal by the full Judiciary Committee resulted in a bill that failed to address the principal problems faced by the business community in hiring and transferring foreign nationals. This committee should carefully consider these problems before endorsing the elimination of such obviously necessary reform. The original reform proposal allocated 100,000 immigrant visa numbers to independent immigration categories. Five categories, later synthesized to four, were established, with priority given to persons of exceptional ability in the arts, sciences and business, followed by preference to skilled workers and investors of a substantial amount of capital. One positive feature of this proposal was the allocation of numbers between the categories by means of a straight "fall-through" system: the

highest priority would be allocated all of the visa numbers required by demand before any numbers would be available to the next priority. The one exception to this allocation method was a maximum of ten percent of the total visa numbers to the investor category. Because of the increased number of immigrant visas available to independent immigrants in the proposed system over the present system, we foresee that the needs of the business community will be adequately served by the total reform proposal.

Through the course of congressional consideration of the Simpson-Mazzoli Bill last term, several changes were wrought in the immigration selection system proposal. First, the number of visas allotted to independent immigrants was reduced to 75,000 from the original 100,000, and the requirements for classification in the investor category were eased somewhat with regard to the location of the investment enterprise in an area of high unemployment. Finally, upon consideration of the proposal in the House of Representatives, the Simpson-Mazzoli revision of the immigration selection system was eliminated.

ACIP spoke out strongly against the elimination of the Simpson-Mazzoli proposal, and we continue to do so. The positive aspects of the proposal -- an allotment of visas to independent immigrants separate from the allotment to family groups, a redefinition of the preference categories, and the "fall-through" allocation system -- are a vast improvement over the current system. At present, the immigration requests of many business executives languish for several years because they can only qualify under the lowest preference category. This problem arises



because no more than 57,000 visas are currently available to independent immigration categories, the categories are defined so that it is questionable whether even some high-level business executives can qualify in the higher of the two independent immigration preferences, and the backlog in the family preference categories because of ever-increasing demand leaves fewer and fewer visas for the lowest preferences. Our members see no rational explanation for requiring high-level executives and skilled technical personnel to stand in line for two or three years behind unskilled labor, as the present system requires. The dollar loss this system causes to the U.S. economy can only be guessed at, but the harm it causes is clear. No amount of controversy over the proper allotment of family reunification visa numbers should deter this body from adopting a reform proposal which it found necessary last year, and which continues to be one of the most essential reforms this body can enact.

It is imperative that the immigration reform proposal establishing a separate independent immigrant selection system be enacted in this round of immigration reform. While there are admittedly differences of opinion regarding the relative importance of the family reunification and independent immigrant sectors of the total immigrant visa allotment, these differences do not appear to ACIP to be irreconcilable. Our greatest fear is that the much needed reform of the immigration selection system, if not enacted at this time, will fail to gain sufficient interest on its own merits to be enacted at a later time. As active participants in the legislative process, the committee members are

all aware of the energy and leadership that is required to enact any piece of legislation. While the leadership in this case is not lacking, the energy needed to put through meaningful reform in an area so little understood by so many may well dissipate after a first round of reform.

The immigration selection system cannot wait another thirty years before it is finally revised. Particularly, the needs of business, and as a corollary the American economy, will continue to be short-changed without addressing the critical problems business faces under the present immigration system. The original Simpson-Mazzoli proposal was a reasoned and well-balanced approach to these problems. Certainly some way can be found to include in this immigration reform package the basic features of that proposal: a separate allotment of visas to independent immigrants, some increase in the number of available visas, and a redefinition of the eligible categories. No proposal is more important for this committee to consider than the inclusion of some form of this proposal in its final product.

#### Labor Certification Procedures

Another concern of our members is with the form that labor certification reform proposals took in the last Congress. The proposal incorporated in the Simpson-Mazzoli Bill and finally adopted by the Senate would permit the Secretary of Labor to fulfill the labor certification requirement without reference to the particular job opportunity and by use of national labor market information, rather than by reference to the labor market in the

area of intended employment. While a streamlining of the labor certification process through greater reliance on labor market data is a desirable change from ACIP's viewpoint, we continue to believe that the Senate's version of this proposal would permit the Department of Labor to dispense with the individual labor certification procedure in favor of comprehensive schedules of certifiable or noncertifiable occupations.

This result would be highly undesirable from the standpoint of the business community. Many positions in today's highly complex business scene are not readily susceptible to such scheduling. The specific requirements of many positions in sophisticated multinational operations are so specialized that it would seem to be impossible for any set of schedules, no matter how comprehensive, to account for all positions. The result would undoubtedly be a degree of generalization with regard to business positions that might prevent the granting of labor certification for a position for which a demonstrable shortage, but no appropriate category on a Department of Labor schedule, exists.

In the House Judiciary Committee, an amendment to the language of the Senate bill was adopted which accounts in part for the concerns of ACIP. Under the House version, the Secretary of Labor would be permitted to use nationwide labor market information "with or without reference to the specific job for which certification is requested". This amendment was apparently an effort to at least implicitly authorize the use of an individual labor certification procedure in appropriate cases.

ACIP continues to believe that explicit statutory language is



needed to prevent the Department of Labor from relying exclusively on predetermined schedules of certifiable occupations in issuing labor certifications. Last year, we put forward proposed language which would accomplish this result and we continue to advocate its inclusion in the labor certification section of an immigration reform bill. While permitting reference to national labor market data and reliance on scheduling, our proposal provides: "When the employer believes, however, that the specific job opportunity has special requirements not adequately accounted for in the national labor market information, he shall be accorded the opportunity to demonstrate that the conditions in this section are met, through such procedures as the Secretary of Labor shall specify." This language would require provision for an individual testing of the labor market in those cases in which the employer requests it. ACIP believes that the interests of the business community are best served by this proposal and continues to urge its adoption.

#### Two-year Foreign Residency Requirement for Students

One of the most controversial provisions of the Simpson-Mazzoli Bill in the last Congress was the proposal to subject all foreign students to the requirement that they return to their home countries for two years prior to having the opportunity to reenter the United States either as immigrants or temporary worker nonimmigrants. The controversy created by this provision was well-deserved, because its broad sweep failed to account for many legitimate situations involving foreign students with skills and training in short supply in this country.

ACIP applauds the efforts of this committee last term to narrow that broad sweep, and hopes that this term it will go farther. While the two-year foreign residency requirement for exchange visitors in the "J" nonimmigrant category bears some reasonable relationship to the purposes of the exchange program -- to impart to an alien skills in short supply in his home country - - no such purpose underlies the provision to permit foreign students to study in this country. Section 101(a)(15) (F) of the current Act does not require as a prerequisite to admission of a foreign student that he not be able to obtain the training and education in his home country. Regardless of the quality of such programs in his own, or other, countries, he may still choose to come to the United States to undertake his academic program. In addition, most foreign students do return to their home country upon completion of their education, even without a foreign residency requirement. Therefore, it would appear that this provision would serve little purpose in affecting what is already the prevailing situation with regard to the temporary stay of most students.

Despite the lack of any clear relationship between the admission of foreign students to this country and the proposed two-year foreign residency requirement, it is clear that the proposal has many proponents. A perception undoubtedly exists that foreign students use the opportunity to gain temporary admission to this country to study as a "foot in the door" to remain here permanently, taking high-paying jobs from U.S. workers. As a foundation for imposition of the two-year foreign residency

requirement, however, this perception is highly questionable and the result is short-sighted indeed. Only those students whose skills are demonstrably in short supply in this country, as evidenced by the issuance of a labor certification, can hope to remain here permanently. The labor certification procedure is the safeguard, already incorporated into the statute, to prevent alien students from using their admission to a U.S. university as a wedge into the U.S. job market. If the skills developed by the alien through his education are truly in short supply and his employment would not displace a U.S. worker, then the position he is to fill would need to be filled from outside of the U.S. labor market, whether or not the student is permitted to fill it. The only difference is that the company with the need for the student's skills would have to engage in expensive recruitment campaigns abroad and fill the position with an alien whose educational credentials, because they are not necessarily from a U.S. university, might not be as outstanding as the student who studied here.

In short, it is the position of ACIP that the two-year foreign residency requirement does not serve a useful function and is based on a faulty assumption regarding the role played by foreign students in the U.S. labor market. While high unemployment is troubling to everyone, the answer to the problem is not to force vacancies on companies for positions that cannot be filled from the unemployed labor pool. ACIP believes that those considering immigration reform in this body have underestimated the shortages of certain types of persons on the U.S. economy.



The proposal for timed phase-out of any waivers of the requirement particularly reflects this lack of understanding. Shortages of high technology people goes to the very essence of educational objectives and societal values. ACIP is not aware of any data which would suggest that U.S. workers are moving to fill the shortage which demonstrably exists in many technical and scientific fields. While the increase in interest in these fields by U.S. workers and students would be desirable and might obviate the need for reliance on foreign students, a change in attitude and preference of this nature is not something that the business community or this Congress can control or direct. In a free society, we must live with the preferences of our citizenry, and unless this body can perceive a shift in the attitudes and preferences of American workers and students that is not readily apparent to ACIP there is no basis for imposing a time restriction on the granting of waivers to foreign students. When the time comes that U.S. students are clamoring to receive Ph.D. degrees in physics or electrical engineering, the U.S. business community will respond to the changed labor market conditions, or the Congress will undoubtedly require a response. Until that time comes, however, a time restriction of the type proposed in the House is not a useful provision.

If some form of a foreign residency requirement must be adopted as part of the overall immigration reform proposal, this committee must make certain that the legitimate needs of the U.S. economy are not ignored. The incorporation of adequate waiver provisions into any foreign residency proposal is essential to

assure that the business community can fill its need for sophisticated talent and remain competitive with the highly efficient operations of foreign industry.

The waivers adopted by the House Judiciary Committee last year provide a good starting point for considering the needs of the business community. Included were waivers for those alien students offered a research or technical position in the field which they received their degree by a U.S. employer, provided a labor certification is obtained. Waivers were also provided for certain aliens engaged in specified temporary training programs under Section 101(a)(15)(H)(iii) of the current statute, and for persons filling teaching positions in certain technical and scientific fields.

ACIP recommends that two changes be made in the House proposal that are necessary to provide business with the maximum flexibility to meet its needs for skilled technical personnel. First, provision must be made for the waiver of the requirement for those aliens with technical and research capability whose skills are sought on a temporary basis by a U.S. employer. Provision for change of nonimmigrant status from the student category to the H-1 temporary worker category would provide the business community with access to desperately needed skills without requiring a commitment to permanent resident status for the alien. Without this provision, immigrant visas would be needlessly allotted to persons for whom a company's need is only short-term, such as those persons whose skills are required on a limited research project. In addition, a safeguard against abuse

of this change of status provision is already built into the current statute, since Section 214 of the Act requires that the Attorney General approve the classification of any alien as a qualified temporary worker in the H-1 category. Since the alien's qualifications are clearly subject to rigorous scrutiny under this provision, a regular check can be made to assure that only those aliens who truly possess research and technical capabilities are the beneficiaries of the waiver.

Second, the waivers themselves should be broadened to cover students in any area for which a graduate level degree is required and a labor certification can be obtained. As long as the safeguard of labor certification is present, there is no logical or sound reason for not permitting students who meet labor certification requirements to remain in the United States. The U.S. economy is dramatically affected by such shortages whether they occur in such areas as international banking or marketing or in the technical and research fields for which waivers were provided in the House version of the bill last term. The ability of U.S. business to remain competitive in the international market place is the key consideration that ought to govern the committee's consideration of this delicate issue.

#### Other Proposals Affecting the Business Community

Several other provisions of the Simpson-Mazzoli reform measure presented to Congress last year are of interest to ACIP's membership. One of the provisions with regard to family reunification presents a very human problem which we believe this



committee must address. As originally proposed, the Simpson-Mazzoli Bill would have eliminated immigration preference consideration for the unmarried adult sons and daughters of U.S. permanent residents. This provision would have caused particular hardship to those families coming to the United States as employees of multinational corporations who counted among the family unit children over 21 years of age who still depend for support on their parents. In today's sophisticated society it is not unusual for children, particularly those still in school, to be a part of the family unit well past the age of 21. While the Senate adopted this limitation on eligibility for permanent residence, the House Judiciary Committee amended this proposal to provide for permanent residence for those children of U.S. permanent residents up to the age of 26. ACIP believes that this proposal is beneficial and would eliminate needless hardship to the families of many company executives and employees, who might not accept U.S. assignments if they were unable to preserve their family unit.

Another provision of the bill passed by the Senate last year which could create unnecessary hardship is the strict bar to adjustment of status for those persons who have "failed to maintain continuously a legal status since entry in the United States." The House Judiciary Committee adopted an amendment to this provision which would bar adjustment for those persons "not in legal immigration status on the date of filing the application for adjustment of status." Thus, aliens who have failed to maintain legal status since their entry into the United States,

but who have corrected such failure and regained proper status prior to the filing of an adjustment application would be eligible for adjustment. This provision accounts more fully for the not uncommon situation in which an alien fails to maintain valid status because of a technical violation of the law, or because of changing interpretations of the law. ACIP endorses the House Judiciary Committee's language as more realistic in view of the complex nature of the immigration statute. It accounts for the good faith effort of persons to comply with all provisions of the immigration statute, as evidenced by their regaining of valid status, while furthering the obvious policy goal of not rewarding those persons who have consciously failed to comply with the law.

Finally, I want to take this opportunity to continue to endorse a proposal which has not appeared in any version of the immigration reform proposals that have been considered by the Congress: the enactment of an intracompany transferee program similar in mechanics to the present exchange visitor program. Under ACIP's proposal, which Mr. Fragomen has presented to this committee previously, multinational companies that regularly transfer a significant number of personnel to the United States would be authorized to issue their own approval notices, subject to the agreement of a U.S. consul to issue a nonimmigrant visa to the employee as a bona fide nonimmigrant. The INS would no longer need to approve petitions on behalf of the employee once it had certified that the company qualified for an intracompany transfer program. The company would thus be saved in every case from demonstrating that its corporate structure qualifies for

consideration in the "I" nonimmigrant category. While this program could be instituted administratively, and in fact the INS has had such a program under active consideration, it has been almost a year since that consideration began. ACIP believes that congressional action on this proposal through its inclusion in the immigration reform package would insure its institution and finally bring about a desirable change that would save both the government and business from unnecessary paperwork and expense.

### Conclusion

I wish to conclude by repeating ACIP's endorsement of immigration reform in general, and the Simpson-Mazzoli proposal in particular. While there is room for improvement in this proposal, it stands as an admirable basis for reforming our immigration laws in a manner that would satisfactorily serve the nation's business community. ACIP engaged in major efforts in the last Congress to assure the passage of this legislation, including communications with every member of this House urging its enactment. We also wrote to Representative Rodino in the week preceding its consideration by the full House to endorse the proposal despite some of the misgivings already cited. We will continue this year to seek the best possible immigration legislation. We fervently hope that the bill drafted by this committee will draw upon the experience of the last year and will include changes from the original proposal that take into account the legitimate interests of the nation's business community.



Mr. MAZZOLI. Mr. Ben Jarratt Brown is recognized for 5 minutes.

Mr. BROWN. I am Ben Brown, president of CGA, Inc., and executive director of the Alliance for Immigration Reform, Inc. The alliance represents some of our country's leading international high-technology companies.

The alliance supports the timely and important work of your subcommittee and strongly endorses your efforts to bring illegal immigration under control, to place a reasonable limit on the annual flow of immigrants into the United States and to establish workable prohibitions on the hiring of illegal immigrants.

As you know, the alliance worked vigorously last year to rally business support for immigration reform. On the touchy issue of sanctions we have repeatedly made the point this way:

The prospect of jobs is the magnet that draws illegal immigrants.

Business creates the magnet, not Government.

If the magnet is to be shut off, then business must do it.

Government can and should set the policy; business can and should then aid in its implementation.

It is right for Government and business to work together to make the law work. It is equally right for those who refuse to honor the law to face penalties—or sanctions—for breaking it.

Two facts are clear:

First, only those with an active interest in breaking the law can be opposed to the means to assure its effective enforcement.

Second, those who continue to oppose penalties or sanctions must properly propose equally workable alternatives. They have yet to do so.

There is, of course, the very real and legitimate concern that the law, in setting up penalties or sanctions, may invite administrative overkill or excesses. We share the concern of the U.S. Chamber of Commerce and others about the potential demand for unduly burdensome paperwork and recordkeeping. We're also concerned about the possibility of unrealistically restrictive interpretations of what constitutes a good-faith effort to comply and about how sanctions may be aggregated—issues that will be discussed at greater length by the National Association of Manufacturers and the Business Roundtable.

We know it is not the intent of this subcommittee to sponsor administrative excesses. In that connection, we, who represent the concerns of business, have submitted several amendments that, based on the practical experience of the business sector, will resolve the concerns and, at the same time, assure equally or more effective reinforcement. We urge your favorable action on them this year.

We want to stress several other areas of utmost concern:

First is the original requirement that all foreign students, on completion of studies in the United States, leave the United States for a period of 2 years before they become eligible for reentry.

We understand the intent.

Certainly it is poor public policy for the United States to deprive other nations of their own needed technical manpower.

Certainly we must do all we can do to encourage more young Americans to develop the high technical skills in professions

needed to keep American industry competitive at home and abroad. We've no interest in perpetuating any American dependence on foreign technical manpower. American business has made massive investments to develop our own technical manpower, and will continue to do so.

But it is a mistake to shut off the safety valve. For reasons that will be discussed at length by the American Electronics Association, the Association of American Universities, and the American Council on International Personnel, American industry must not be denied access to certain foreign students with skills in critical demand or short supply in the United States, or who might benefit greatly us and themselves from practical training offered by a number of American companies. The AEA, the AAU, and ACIP are offering remedies we fully support.

A second area of concern is in the area of preferences. The difficulty arises with the new skilled worker preference as proposed in S. 529, though not in H.R. 1510. The effect is to lump the urgently needed high-technology people as well as various managers or member of the professions with such skilled workers as stonemasons and governesses. We think the former more directly benefit our Nation's economy in helping to create new industries, new jobs, and favorable export balances and should, therefore, take precedence.

A third area of concern bears on the intracompany transfer of foreign nationals. That subject has been addressed and I will not elaborate further.

A fourth area of concern bears on the certification process. We favor blanket labor certification. In many cases, probably most, blanket certification is appropriate and certainly will save time. But stronger provision must be made in the pending bills to assure individual certification when the kind of problems the American Council on International personnel has discussed, arise.

The alliance is in full agreement with the Business Roundtable, the National Association of Manufacturers, the American Council on International Personnel, the National Foreign Trade Council, the American Electronics Association, and the Association of American Universities on recommended modifications to the pending immigration reform bill which we think will enhance the excellent work of your subcommittee and of its dedicated staff. We hope that our collective concern and recommendations will be taken into account and that we can all work together with the kind of teamwork that will lead to needed immigration reform this year.

None of us—not in Government, or industry, or labor—has a lock or a proprietors claim on the national interest. But, together with comprehension, and compassion, and teamwork, we can achieve the urgently needed immigration reform this year.

To achieve that will require inconvenience for industry and a fair amount of political courage on the part of government.

We thank you.

[The complete statement follows:]



PREPARED STATEMENT OF BEN JARRATT BROWN, EXECUTIVE DIRECTOR, ALLIANCE FOR IMMIGRATION REFORM, INC.

Good morning. I'm Ben Brown, President of CGA, Inc., and Executive Director of the Alliance for Immigration Reform, Inc. The Alliance represents some of our country's leading international high technology companies.

The Alliance supports the timely and important work of your subcommittee and strongly endorses your efforts to bring illegal immigration under control, to place a reasonable limit on the annual flow of immigrants into the U.S. and to establish workable prohibitions on the hiring of illegal immigrants.

The goals are very important.

As you know, the Alliance worked vigorously last year to rally business support for immigration reform. On the touchy issue of sanctions we've repeatedly made the point this way:

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Business controls the magnet, not government.

If the magnet is to be shut off, then business must do it.

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Two facts are clear:

Only those with an active interest in breaking the law can be opposed to the means to assure its effective enforcement.

Those who continue to oppose penalties or sanctions must properly propose equally workable alternatives. They have yet to do so.

There is, of course, the very real and legitimate concern that the law, in setting up penalties or sanctions, may invite administrative overkill or excesses. We share the concern of the U.S. Chamber of Commerce about the potential demand for unduly burdensome paperwork and recordkeeping. We're also concerned about the possibility of unrealistically restrictive interpretations of what constitutes a good faith effort to comply and about how sanctions may be aggregated—issues that will be discussed at greater length by the National Association of Manufacturers.

We know it is not the intent of this subcommittee to sponsor administrative excesses. In that connection, we who represent the concerns of business have submitted several amendments that, based on the practical experience of the business sector, will resolve the concerns and, at the same time, assure equally or more effective reinforcement. We urge your favorable action on them this year.

We want to stress several other areas of utmost concern:

First is the requirement that all foreign students, on completion of studies in the U.S., leave the U.S. for a period of two years before they become eligible for reentry.

We understand the intent.

Certainly it is poor public policy for the U.S. to deprive other nations of their own needed technical manpower.

Certainly we must do all we can do to encourage more young Americans to develop the high technical skills in professions needed to keep American industry competitive in world markets. American business has made massive investments to that end, and will continue to do so.

But, for reasons that will be discussed at length by the American Electronics Association, the Association of American Universities, and the American Council on International Personnel, American industry must not be denied access to certain foreign students with skills in critical demand or short supply in the U.S., or who might benefit greatly from practical training offered by a number of American companies. The AEA, the AAU and ACIP are offering remedies we fully support.

A second area of concern is in the area of preferences. The difficulty arises with the new skilled worker preference as proposed in S. 529, though not in H.R. 1510. The effect is to lump the urgently needed high technology people as well as various managers or members of the professions with such skilled workers as stone masons and governesses. We think the former more directly benefit our nation's economy in helping to create new industries, new jobs and favorable export balances and should, therefore, take precedence. We're proposing an amendment toward that end.

A third area of concern bears on the intracompany transfer of foreign nationals. We, representing business, have made a proposal to permit selected prequalified firms to handle their own processing of L visas under the control of the INS. The idea is to relieve the INS of unnecessary administrative burden and to provide more timely visa availability. If American business is to remain competitive on the global



scene and here at home, we must be able rapidly to assemble product development teams to capitalize on rapidly changing technologies. We need to be able to draw on our worldwide resources. We've proposed a system on which we think there is general agreement. It should be codified in the statutes. A number of those representing business here today and tomorrow will discuss that more fully.

A fourth area of concern bears on the certification process. We favor blanket labor certification. In many cases, probably most, blanket certification is appropriate and certainly will save time. But stronger provision must be made in the pending bills to assure individual certification, when the kind of problems the American Council on International Personnel will discuss, arise.

The Alliance is in full agreement with the Business Roundtable, the National Association of Manufacturers, the American Council on International Personnel, the National Foreign Trade Council, the American Electronics Association and the Association of American Universities on recommended modifications to the pending immigration reform bill which we think will enhance the fine work of your subcommittee and of its dedicated staff. We hope that our collective concerns and recommendations will be taken into account and that we can all work together with the kind of teamwork that will lead to needed immigration reform this year.

We thank you for your interest and will welcome any questions.

Mr. MAZZOLI. Thank you very much, Mr. Brown, right on time. We thank you for that very interesting statement.

We now will hear Mr. Howard Knically of TRW, on behalf of the National Association of Manufacturers.

Mr. KNICELY. Mr. Chairman, I am Howard V. Knically, vice president of human relations of TRW Inc. Today I am appearing on behalf of both the National Association of Manufacturers and the Business Roundtable.

The NAM is a voluntary business organization with over 12,000 member companies located in all parts of the country. The NAM membership accounts for approximately 75 percent of the Nation's manufacturing output and 80 percent of the members are generally considered to be small businesses. NAM also has an affiliation with 158,000 businesses through its association department and the National Industrial Council.

The Business Roundtable is an organization made up of approximately 200 chief executive officers of large American corporations.

The NAM and the Business Roundtable support the need to establish control over our Nation's borders and immigration. To that end we support the thrust of the "Immigration Reform and Control Act of 1983" (H.R. 1510). The industrial community, represented by both organizations, is prepared to accept the imposition of employer sanctions against the hiring of illegal immigrants provided that those sanctions, as outlined in H.R. 1510, recognize the realities of the workplace and do not place an undue burden on employers in order to demonstrate compliance. In addition, we hope that his legislation will recognize industry's need for individuals with certain critical skills and allow corporations the ability to train technical and management personnel in a manner consistent with the multinational operations of many of our companies.

H.R. 1510 goes a long way in addressing these concerns. However, we would like to suggest to this subcommittee certain amendments which would improve our ability to enhance the quality of our workforce and minimize the administrative burden—and cost—imposed on us.

The NAM and the Business Roundtable are pleased that the legislation recognizes the manner by which hiring decisions are made in the application of the sanctions to "distinct, physically separate

subdivisions" for multiplant, multilocation corporations (Section 101). Also, H.R. 1510 will provide a reasonable burden by establishing compliance in good faith as an affirmative defense that "the person or entity has not violated" the prohibitions of the legislation. The legislation, however, fails to define "good faith." As a result, future judicial or regulatory definitions of the elements of "good faith" could result in the type of contradictory, confusing, and complex standards that already exist in the defense of affirmative action programs. Thus, such conflicting interpretations would negate the validity of this defense.

The legislation should be amended to define "good faith" as compliance with the requirements of the act by reviewing the identification document and by producing and retaining the verification forms established by the Attorney General as described in the legislation.

H.R. 1510 provides for the Secretary of Labor to certify certain skills in shortage in order to allow independent immigrants to enter the United States if they possess such skills (section 201). Currently, the Secretary uses schedules based on broad categories of job classifications to determine whether a skill shortage exists within the pool of available American workers. These current categories are not always definitive enough to identify specific skills which are needed, particularly for emerging technologies.

The NAM and Business Roundtable suggest that section 201 be amended to change the labor certification to clarify and ensure that a specific labor certification will be available for these narrowly defined skills.

An issue of major concern to the members of the NAM and the Business Roundtable is the need to expedite legal transfers of managers between foreign subsidiaries and U.S. based operations. This can be accomplished fairly easily through a few procedural changes which are outlined in attachment A which I have included as an addendum to my testimony.

Mr. MAZZOLI. Mr. Knicely, I hate to bother you. If you could wrap up; your time has expired. You have the "L" visa issue to get to.

Mr. KNICELY. That is fine. We just wanted to make our point with respect to the "L" visa.

Mr. MAZZOLI. And you would rather have that rather than wait for the INS to install it?

Mr. KNICELY. That is right; and the other point I would like to make is with respect to student waivers for critical skills and management trainees. We are glad that you recognize the need for academia, business and industry to employ students who possess specialized and critical skills.

We don't take these things very lightly. I think you understand our point here and I don't need to pursue that.

Mr. MAZZOLI. You asked that even though we put waivers in. You would like to expand that?

Mr. KNICELY. We would like a case-by-case review of that; yes, sir.

[The complete statement follows:]

TESTIMONY OF

HOWARD V. KNICELY

VICE PRESIDENT, HUMAN RELATIONS

TRW INC.

AT THE HEARING

BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

MARCH 9, 1983

Mr. Chairman, I am Howard V. Knicely, Vice President, Human Relations of TRW Inc. Today I am appearing on behalf of both the National Association of Manufacturers (NAM) and the Business Roundtable (BRT).



The NAM is a voluntary business organization with over 12,000 member companies located in all parts of the country. The NAM membership accounts for approximately 75 percent of the nation's manufacturing output and 80 percent of the members are generally considered to be small businesses. NAM also has an affiliation with 158,000 businesses through its Association Department and the National Industrial Council.

The Business Roundtable is an organization made up of approximately 200 chief executive officers of large American corporations.

The NAM and the Business Roundtable support the need to establish control over our nation's borders and immigration. To that end we support the thrust of the "Immigration Reform and Control Act of 1983" (H.R.1510). The industrial community, represented by both organizations, is prepared to accept the imposition of employer sanctions against the hiring of illegal immigrants provided that those sanctions, as outlined in H.R.1510, recognize the realities of the workplace and do not place an undue burden on employers in order to demonstrate compliance. In addition, we hope that this legislation will recognize industry's need for individuals with certain critical skills and allow corporations the ability to train technical and management personnel in a manner consistent with the multinational operations of many of our companies.

H.R.1510 goes a long way in addressing these concerns. However, we would like to suggest to this Subcommittee certain amendments which would improve our ability to enhance the quality of our workforce and minimize the administrative burden (and cost) imposed on us.

I. Burden of Proof

The NAM and the Business Roundtable are pleased that the legislation recognizes the manner by which hiring decisions are made in the application of the sanctions to "distinct, physically separate subdivisions" for multiplant, multilocation corporations (Section 101). Also, H.R.1510 will provide a reasonable burden by establishing compliance in good faith as an affirmative defense that "the person or entity has not violated" the prohibitions of the legislation. The legislation, however, fails to define "good faith." As a result, future judicial or regulatory definitions of the elements of "good faith" could result in the type of contradictory, confusing, and complex standards that already exist in the defense of affirmative action programs. Thus, such conflicting interpretations would negate the validity of this defense.

The legislation should be amended to define "good faith" as compliance with the requirements of the Act by reviewing the identification document and by producing and retaining the verification forms established by the Attorney General as described in the legislation.

## II. Independent Immigrants Labor Certification

H.R.1510 provides for the Secretary of Labor to certify certain skills in shortage in order to allow independent immigrants to enter the U.S. if they possess such skills (Section 201). Currently, the Secretary uses schedules based on broad categories of job classifications to determine whether a skill shortage exists within the pool of available American workers. These current categories are not always definitive enough to identify specific skills which are needed, particularly for emerging technologies.

The NAM and Business Roundtable suggest that Section 201 be amended to change the labor certification to clarify and ensure that a specific labor certification will be available for these narrowly defined skills.



### III. IN-HOUSE "L" VISA PROGRAM

An issue of major concern to the members of the NAM and the Business Roundtable is the need to expedite legal transfers of managers between foreign subsidiaries and U.S. based operations. This can be accomplished fairly easily through a few procedural changes which are outlined in Attachment A which I have included as an addendum to my testimony.

When we first raised the in-house "L" visa issue to members of the House and Senate in the 97th Congress, we were informed that the Immigration and Naturalization Service (INS) had assured members that there was no need to legislate "L" visa reforms since the INS had committed itself to administratively remedying this problem. This system is not yet in place.

Since the INS has yet to act on the in-house "L" visa program, I believe you can understand why we are reluctant to pass up an opportunity to seek your support to include these changes in H.R.1510. I urge you to address this issue so that companies have the flexibility necessary to address changing personnel needs in a complex and competitive world economy.

#### IV. Student Waivers for Critical Skills and Management Trainees

The NAM and the Business Roundtable are pleased that H.R.1510 recognizes the need for academia, business and industry to employ students who possess specialized or critical skills that are in short supply in the United States (Section 212). Industry does not take these waivers lightly, and, at a time when we need to control immigration, we recognize the need to seek these waivers for students on a case by case basis; however, we would appreciate it if the Subcommittee would consider expanding these categories for waivers -- again, on a case by case basis -- to include students having exceptional ability in the area of business expertise.

Finally, we would like to thank Mr. Mazzoli and the members of this Subcommittee for including an exemption to the student waiver for nonimmigrant students receiving training by a corporation prior to returning to their native countries or countries of last residence as managers of the same firm. While we prefer the four-year training provision in S.529, we feel that the three-year House waiver goes a long way towards providing us with the flexibility necessary to compete in a multinational marketplace.

On behalf of the NAM and the Business Roundtable, I would again like to thank the Subcommittee for the opportunity to present our views on this legislation. We will be happy to provide additional information on any of the topics we raised should the Subcommittee desire.

## IN-HOUSE "L" VISA PROGRAM

Amend 8 CFR 214.2(1) as follows:

1. Revise 214.2(1)(1) by making the following insertions:  
At the end of the first sentence change the period to a comma and add:  
"or must be the beneficiary of a certificate of eligibility issued pursuant to Section 214.2(1)(5)".

Before the beginning of the second sentence change the language before the first comma to read:

"Except as provided in Section 214.2(1)(5), a separate petition for each such alien",

2. Add new 214.2(1)(5) to read:  
(5) Petition for authorization to issue certificates of eligibility to intra-company transferees.  
(i) General.

A firm or corporation or other legal entity may petition for authorization to certify eligibility of managers and executives for temporary transfer to the United States under Section 101(a)(15)(L) of the Act.



(ii) Eligibility Requirements. Authorization to certify the eligibility of managers and executives pursuant to this paragraph may be granted only if the petitioner:

- A. Establishes that in the preceding calendar year the petitioner (including affiliates and subsidiaries) filed at least ten L-1 petitions which were subsequently approved and declares that the temporary transfer of executives and managers to the United States is expected to continue;
- B. Establishes that it has been maintaining an office or facility both in the United States and in a foreign country for at least one year and has been conducting business both in the United States and in a foreign country for at least one year;
- C. Agrees that it will promptly send to the District Director a copy of each authorization issued pursuant to this paragraph;

D. Agrees that it will promptly report to the District Director the failure of any manager or executive to comply with the terms of his admission.

(iii) Submission of Petition. A petition for authorization pursuant to this paragraph shall be submitted to the District Director having jurisdiction over the area in the United States in which any office or facility of the petitioner (including affiliates or subsidiaries) is located. The petition shall be submitted on the petitioner's letterhead. The petition shall state that it is being submitted for the purpose of requesting authorization to certify the eligibility of managers and executives pursuant to 8 CFR 214.2(1)(5). The following information shall be furnished in the petition:

A. Name and address of the principal office or facility in the United States, and name and address of parent company, if any;

- B. Brief description of the petitioner's business in the United States and abroad;
- C. Approximate number of persons employed by petitioner (including affiliates and subsidiaries) in the United States and abroad;
- D. Approximate worldwide gross income of petitioner (including affiliates and subsidiaries) for its last fiscal year;
- E. Names, dates and places of birth of at least ten managers and executives for whom approved L-1 petitions were filed during the preceding calendar year;
- F. Name and location of each office or facility of petitioner (including affiliates and subsidiaries) in the United States to which managers and executives may be transferred from abroad;



G. Whether the petitioner (including affiliates and subsidiaries) has maintained an office or facility and has been conducting business both in the United States and abroad for at least one year.

(iv) Supporting documents. The petitioner shall submit a copy of its certificate of incorporation or equivalent document and a copy of its latest annual report.

(v) Approval of petition. Upon approval of a petition submitted pursuant to this paragraph, a petitioner shall be notified by letter. The notification shall state that the petitioner is authorized to certify the eligibility of managers and executives for temporary transfer to the United States in accordance with 8 CFR 214.2(1)(5). The notification shall state that the authorization is valid indefinitely unless revoked. A copy of 8 CFR 214.2(1)(5) shall be attached to the notification and the petitioner's attention shall be specifically directed to the provisions concerning issuance of certificates of eligibility.

(vi) Issuance of certificates of eligibility. A firm, corporation or other legal entity which has been authorized to issue certificates of eligibility pursuant to this paragraph shall issue the certificate on its letterhead in duplicate. The certificate shall be issued in the following format:

LETTERHEAD

Date

CERTIFICATION OF ELIGIBILITY OF MANAGER OR  
EXECUTIVE TO TRANSFER TEMPORARILY TO THE  
UNITED STATES UNDER Section 101(a) (15) (L)  
OF THE IMMIGRATION AND NATIONALITY ACT

Pursuant to authorization granted  
under 8 CFR 214.2(1) (5) by the District  
Director of the Immigration and  
Naturalization Service in (city and state)  
on (date) under File No. \_\_\_\_\_ # \_\_\_\_\_, it  
is hereby certified that the person named  
below is eligible for temporary transfer

to the United States as a manager or executive. This certificate is valid for one year from the date of issuance for presentation to an American Consul Officer abroad and an Immigration Officer at a port-of-entry to the United States.

- name
- foreign address
- date and country of birth
- name and address of organization  
by which employed abroad
- position title abroad and brief  
job description
- date employment abroad began as a  
manager or executive
- name and address of organization  
to which alien will be temporarily  
transferred in the United States
- brief explanation as to how the  
U.S. organization and the foreign  
organization have an affiliate,  
subsidiary or other qualifying  
relationship



- position title of job to which alien is being temporarily transferred in the U.S. and brief job description
- period of time alien is expected to be in the U.S.
- names of spouse and children and their dates and countries of birth

(Signature of responsible official)

Name of responsible official

Title

(vii) Disposition of Certificates of

Eligibility The certificate shall be presented by the alien to the American Consul with the visa application. If the visa is issued, both copies of the certificate will be endorsed to show the date of issuance and the location of the visa issuing office. Upon arrival at the port of entry in the United States, both copies shall be presented to the examining immigration officer. If the alien is admitted both copies of the certificate

shall be endorsed by the immigration officer to show the date and port of arrival and the date to which admitted. The original shall be lifted and forwarded to the District Director who granted the authorization to issue the certificate and the duplicate shall be retained by the alien. An alien admitted upon presentation of a certificate of eligibility shall be subject to all the pertinent provisions of Section 214.2(I) that are not inconsistent with this paragraph.

(viii) Denial. If the petition is denied the petitioner shall be informed of the reasons therefor and of his right to appeal in accordance with the provisions of part 103 of this statute.

(ix) Revocation of authorization. The authorization granted pursuant to this paragraph may be revoked by the District Director for failure to submit the required reports, abuse of the authorization or other good and sufficient cause. The requirement of Section 214.4(b)-(k) inclusive concerning notice of intention to revoke, answer, hearing, decision, appeal and reopening shall be applicable to the extent feasible and appropriate.

Mr. MAZZOLI. Mr. Thompson, welcome.

Mr. THOMPSON. Thank you, Mr. Chairman. I am Robert T. Thompson, chairman of the Board of the U.S. Chamber of Commerce. I am also senior partner in the law firm of Thompson, Mann & Hutson of Greenville, S.C., Washington, Atlanta, and New York.

I am pleased to appear again before you, Chairman Mazzoli, and the other members of the subcommittee to express the chamber's views on the subject of employer sanctions in the context of immigration reform.

I testified before you at a joint hearing on this same subject last April, and the chamber submitted a lengthy statement on employer sanctions to the Senate Immigration Subcommittee in September 1981.

I would stress that our continuing desire to be heard on this issue is indicative of the importance which we attach to it.

In fact, my appearance today and my position as chairman on the board should demonstrate our concern. In the interest of time, I will summarize and ask that our statement be made a part of the record.

Mr. MAZZOLI. Without objection.

Mr. THOMPSON. I also want to commend the 97th Congress, and particularly Senator Alan Simpson and Representative Mazzoli, for their dedicated efforts last year in attempting to enact meaningful immigration reform.

Although we disagreed in substance on the proposed employer sanctions requirement, we never questioned the good faith of the sponsors in their sincere efforts to come to grips with the many aspects of this troubling national problem.

Although we continue to oppose the employer sanctions provision proposed in H.R. 1510, which is identical to the provision approved by the House Judiciary Committee last year in H.R. 5782, because it would shift the burden of enforcing the Nation's immigration laws from the Federal Government to the private sector, we are nevertheless openminded about finding a solution to this vexing problem.

As we stated in our previous testimony, the chamber does not condone the hiring of illegal aliens. Neither do we in any way associate ourselves with those employers who knowingly or intentionally hire illegal aliens for purposes of exploiting them or evading the labor and employment laws.

There is ample evidence to suggest that employer sanctions in any form will never be an effective deterrent to illegal immigration.

Nevertheless, we believe that if Congress is committed to enacting some form of employer sanctions, as it appears to be, a system can be devised based on targeted enforcement against intentional violators, that minimizes the burden on the vast majority of good faith employers who want to do their part in helping to solve the illegal alien problem.

You have already heard in detail why we believe the present employer sanctions proposal would in practice be ineffective, unworkable, unreasonably burdensome to small business, and potentially very expensive.



Therefore, I will not restate those arguments today and instead refer you to our previous statements.

I would, however, like to develop further a few of the arguments we have already raised as additional reasons why section 101 of H.R. 1510 should not be enacted.

We are fully aware of the language within section 101 designed to minimize the compliance burden on employers. The first offense "citation" provision, the 1 year "public education" provision, and the eventual development of some, as-of-now unknown, form of secure identification are all good faith attempts to assist employers in meeting their compliance obligation.

To this end, the section 101 burden on large employers who have the professional staff expertise to comply with the new requirements under the bill, is costly but probably manageable.

If, as we observed earlier, Congress feels compelled to enact some system of employer sanctions, the following suggestions should be considered as the basis for a more equitable proposal.

First, the system should target enforcement on the employer who knowingly and intentionally employs illegal aliens.

Second, the system should be devised to substantially minimize, or even eliminate, the undue burden placed on the small employer by the present employer sanctions requirement.

Third, the system should place the primary enforcement burden exactly where it belongs—on the Federal Government.

Such a system would establish in law the goal which the proponents of employer sanctions are so anxious to achieve; that is, a statutory violation for the knowing employment of illegal aliens.

Such a system would also recognize the limited resources available to the Government for enforcement purposes and would ensure that those resources will be used in the most efficient and effective manner.

While we do not offer specific language for such a proposal, we commend the attention of the subcommittee to an amendment offered by Senator Tower that was defeated during last year's Senate floor debate on S. 2222.

The essential elements of the Tower amendment would form the basis of a less onerous employer sanctions requirement, as I have just outlined. Further, we do not agree that an employer sanctions provision fashioned on these elements would gut enforcement. Rather, it would focus enforcement on those who would purposely flout the law.

In conclusion, for all of these reasons, we continue to oppose the employer sanctions as proposed in H.R. 1510. Nevertheless, we believe that if Congress, in its wisdom, concludes that some system of employer sanctions must be enacted, the recommendations we have proposed would much more effectively accomplish the goals it seeks.

We urge consideration of these recommendations in lieu of the present proposal, coupled with the recommendations we made in our earlier testimony.

Although we do not have legislative language to offer at this time, we would be pleased to work with members of this subcommittee in fashioning more equitable and effective methods of enforcing our immigration laws.

I appreciate the opportunity to testify today and would be happy to answer any questions.

Mr. MAZZOLI. Thank you very much, Mr. Thompson, for concluding within the time limit.

[The complete statement follows:]



# Statement of the Chamber of Commerce of the United States

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ON: IMMIGRATION REFORM

TO: SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND  
INTERNATIONAL LAW OF THE  
HOUSE JUDICIARY COMMITTEE

BY: ROBERT T. THOMPSON

DATE: MARCH 9, 1983

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The Chamber of Commerce of the United States is the largest federation of business and professional organizations in the world, and is the principal spokesman for the American business community. The U.S. Chamber represents more than 230,000 members, of which more than 226,000 are business firms, more than 2,600 are state and local chambers of commerce, and more than 1,200 are trade and professional associations.

More than 90 percent of the Chamber's members are small business firms having fewer than 100 employees. Yet, virtually all of the nation's largest industrial and business concerns are also active members. We are particularly cognizant of the problems of smaller businesses, as well as issues facing the business community at large.

Besides representing a cross section of the American business community in terms of number of employees, the U.S. Chamber represents a wide management spectrum by type of business and location. Each major classification of American business -- manufacturing, retailing, services, construction, wholesaling, and finance -- numbers more than 15,000 members in the U.S. Chamber. Yet no one group constitutes as much as 23 percent of the total Chamber membership. Further, the Chamber has substantial membership in all 50 states.

The Chamber's international reach is substantial as well. It believes that global interdependence provides an opportunity and not a threat. In addition to the 47 American Chambers of Commerce Abroad, an increasing number of Chamber members are engaged in the export and import of both goods and services, and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

STATEMENT  
on  
IMMIGRATION REFORM  
before the  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, & INTERNATIONAL LAW  
of the  
HOUSE COMMITTEE ON THE JUDICIARY  
for the  
CHAMBER OF COMMERCE OF THE UNITED STATES  
by  
Robert T. Thompson  
March 9, 1983

I am Robert T. Thompson, Chairman of the Board of the U.S. Chamber of Commerce. I am also Senior Partner in the law firm of Thompson, Mann and Hutson of Greenville, South Carolina, Washington, Atlanta, and New York.

I am pleased to appear again before you, Chairman Mazzoli, and the other members of the subcommittee to express the Chamber's views on the subject of employer sanctions in the context of immigration reform. I testified before you at a joint hearing on this same subject last April, and the Chamber submitted a lengthy statement on employer sanctions to the Senate Immigration Subcommittee in September, 1981. I would stress that our continuing desire to be heard on this issue is indicative of the importance which we attach to it.

I also want to commend the 97th Congress -- and particularly Senator Alan Simpson and Representative Mazzoli -- for their dedicated efforts last year in attempting to enact meaningful immigration reform. Although we disagreed in substance on the proposed employer sanctions requirement, we never questioned the good faith of the sponsors in their sincere efforts to come to grips with the many aspects of this troubling national problem.

Although we continue to oppose the employer sanctions provision proposed in H.R. 1510 -- which is identical to the provision approved by the House Judiciary Committee last year in H.R. 5782 -- because it would shift the burden of enforcing the nation's immigration laws from the Federal government to the private sector, we are nevertheless openminded about finding a solution to this vexing problem. As we stated in our previous testimony, the Chamber does not condone the hiring of illegal aliens. Neither do we in any way

associate ourselves with those employers who knowingly or intentionally hire illegal aliens for purposes of exploiting them or evading the labor and employment laws.

There is ample evidence to suggest that employer sanctions -- in any form -- will never be an effective deterrent to illegal immigration.<sup>1/</sup> Nevertheless, we believe that if Congress is committed to enacting some form of employer sanctions (as it appears to be), a system can be devised, based on targeted enforcement against intentional violators, that minimizes the burden on the vast majority of good faith employers who want to do their part in helping to solve the illegal alien problem.

#### BACKGROUND

The U.S. Chamber has a long-standing policy on employer sanctions, one that has been extensively reviewed and reaffirmed by its Board of Directors, which states in essence that we will oppose any government requirements that place an undue burden upon employers. That includes any legislation that places employers in the role of a governmental enforcement agency.

When that policy was reviewed with respect to the employer sanctions requirement proposed in H.R. 5782 (now H.R. 1510), the Chamber's Board unanimously voted to interpret the policy to oppose the employer sanctions provision, section 101.

Let me stress here that the Chamber has taken a position only on the subject of employer sanctions as proposed in H.R. 1510. We do not have a position on the other major provisions within H.R. 1510 designed to achieve immigration reform, although we strongly endorse the effort within the Administration and Congress to address those issues.

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<sup>1/</sup> See GAO Report: "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," August 31, 1982: GAO/GGD-82-86.



At the same time, we continue our own efforts to develop recommendations that would provide solutions to the illegal alien problem. As Chairman Mazzoli knows, our National Chamber Foundation is currently conducting a study of the entire immigration subject. The Foundation is actively seeking the views of all interested parties, including those who wholeheartedly endorse employer sanctions as a primary means to control illegal immigration. The results of the Foundation's immigration project, when finalized, should form the basis of broader Chamber recommendations to aid in solving the problem of illegal immigration.

THE PRESENT EMPLOYER SANCTIONS PROPOSAL:  
WELL INTENTIONED BUT MISDIRECTED

You have already heard in detail why we believe the present employer sanctions proposal would in practice be ineffective, unworkable, unreasonably burdensome to small business, and potentially very expensive. Therefore, I will not restate those arguments today and instead refer you to our previous statements.

I would, however, like to develop further a few of the arguments we have already raised as additional reasons why section 101 of H.R. 1510 should not be enacted.

Particularly Burdensome to Small Business

We are fully aware of the language within section 101 designed to minimize the compliance burden on employers. The first offense "citation" provision, the one year "public education" provision, and the eventual development of some, as-of-now unknown, form of secure identification are all good faith attempts to assist employers in meeting their compliance obligation.

To this end, the section 101 burden on large employers, who have the professional staff expertise to comply with the new requirements under the bill, is costly but probably manageable.

Nevertheless, it is wrong to assume that small businesses, the vast majority of whom have not and would never intentionally hire an illegal alien, will not be burdened by the imposition of yet another government regulatory scheme.

For example, section 101 does require every U.S. employer to verify the employment status of any new hire. Employers of 4 or more must keep a form on file, for a minimum of 3 years, which states that the employer has followed the verification procedure. Failure to keep the required form on file, even if the employer hired only U.S. citizens, subjects that employer to a potential fine of \$500 per person. <sup>2/</sup>

In a world in which a small business person had no other government regulations to worry about, the section 101 requirement may not be excessively burdensome. That is obviously not the case, however. <sup>3/</sup> We can envision, as was the case with the passage of other well-intentioned but burdensome regulatory programs such as OSHA, that it will not be long before the horror stories of paperwork burdens and regulatory abuses start coming from our members.

I would like to acknowledge one difference in H.R. 1510 from the Senate bill which lessens H.R. 1510's small business burden to some extent. An amendment was adopted in Committee last year -- and is preserved in this year's bill -- which provides for a "citation" in lieu of a penalty for a first time offense. This "first-bite-of-the-apple" provision should obviate some of the potential for regulatory abuse.

It is interesting to observe that the primary reason offered by the proponents of the present employer sanctions provision in requiring mandatory recordkeeping is to prevent national origin discrimination against "foreign

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<sup>2/</sup> During House debate on its bill last year, an amendment was agreed to which raised the recordkeeping penalty to \$1,000 and \$1,500 respectively for a second and third or more time violation.

<sup>3/</sup> See, e.g., "Complying with Government Requirements: The Costs To Small and Larger Businesses" Battelle Human Affairs Research Center, for U.S. Small Business Administration, BHARC-320/81/022, September 1981.

looking or sounding" individuals. This concern is certainly well intentioned. Preventing discrimination is a laudatory objective we all share.

Nevertheless, there are far more compelling reasons, given the requirement's potential heavy burden on small business, to argue for its removal as a mandatory procedure.

For example, by requiring that verification forms be kept for hires only, what is to prevent discrimination, if it is to occur, from taking place during the applicant process? For example, if Mr. X and Mr. Y both apply for a job, and Mr. X looks foreign to the employer, Mr. Y may get the job despite Mr. X's better qualifications. If the employer keeps the proper verification form on Mr. Y, he has complied with the law even though the law has not prevented discrimination against Mr. X. To remedy this potential loophole, is Congress ready to require employers to maintain employment verification forms on every person who applies for a job? The House soundly defeated, during the debate last year, an amendment that would have required just that.

More importantly, Congress has comprehensively addressed the problem of employment discrimination and has enacted various penalties and remedies to be applied where discrimination occurs. Title VII of the 1964 Civil Rights Act, Executive Order 11246, and numerous state and local government fair employment practice laws all provide ample authority to root out employment discrimination where it exists, including national origin discrimination which may occur against U.S. citizens because of the requirements of this bill.

Finally, H.R. 1510 includes several provisions requiring close monitoring of employer sanctions to determine if national origin discrimination might occur. These include special monitoring by both the President and the U.S. Civil Rights Commission, with required periodic reports to Congress, and the creation of a joint task force comprised of the Attorney General, the Labor Secretary and the EEOC Chairman to monitor and review allegations of discrimination.

#### Union Hiring Halls Exempt From Coverage

Much has been made about the proposition that the present employer sanctions requirement applies fairly to all parties affected by the bill.



Therefore, we find it interesting to note that the union hiring hall, a means used commonly in the construction and other industries by unionized employers to hire workers, is not covered by the employer sanctions requirement.

While we applaud the Committee's concern for minimizing duplicative recordkeeping, it strikes us as particularly unfair to America's small businesses to saddle them with the full employer sanctions burden while letting the union hiring hall totally off the hook.

#### Willful Violators Will Evade Enforcement

It was well established during previous hearings that the various forms of identification, which employers would be required to examine during the first 3 years after enactment to verify employment, are easily forged and readily available to illegal aliens. Further, the bill provides an affirmative defense to an employer who has complied with the mandatory verification procedure, as evidenced by the retained verification form, in an action alleging the hiring of an undocumented alien. While we firmly believe that the affirmative defense is necessary to protect from potential government harassment those employers complying in good faith, we also believe that the defense provides a means, coupled with the easy availability of forged documents, for intentional violators to evade prosecution under the law. As long as the forged document "reasonably appears on its face to be genuine," the employer has met its compliance burden, even though it may have in fact known that the person or persons hired were illegals. <sup>4/</sup>

Unfortunately, and as a practical matter, the well intentioned small employer is the more likely subject for prosecution and/or penalty under section 101 as it now stands. This person may unknowingly hire an illegal alien, but, because of failure to maintain the proper records, is practically defenseless in an enforcement action. In fact, the small employer can be fined even if only U.S. citizens are hired. He or she also provides a tempting target to the government inspector whose performance is judged on the

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<sup>4/</sup> It is impossible to comment on the effect of a "secure system" of identification upon this process until we know what the system is.

number of violations cited and penalties assessed. Certainly the proponents of Section 101 cannot intend this result.

#### DEVISE A SYSTEM THAT TARGETS THE INTENTIONAL VIOLATOR

If, as we observed earlier, Congress feels compelled to enact some system of employer sanctions, the following suggestions should be considered as the basis for a more equitable proposal.

First, the system should target enforcement on the employer who knowingly and intentionally employs illegal aliens.

Second, the system should be devised to substantially minimize, or even eliminate, the undue burden placed on the small employer by the present employer sanctions requirement.

Third, the system should place the primary enforcement burden exactly where it belongs -- on the federal government.

Such a system would establish in law the goal which the proponents of employer sanctions are so anxious to achieve; i.e., a statutory violation for the knowing employment of illegal aliens. <sup>5/</sup>

Such a system would also recognize the limited resources available to the government for enforcement purposes and would ensure that those resources will be used in the most efficient and effective manner.

While we do not offer specific language for such a proposal, we commend the attention of the subcommittee to an amendment offered by Senator Tower that was defeated during last year's Senate floor debate on S. 2222.

The essential elements of the Tower amendment would form the basis of a less onerous employer sanctions requirement, as I have just outlined. Further, we do not agree that an employer sanctions provision fashioned on these elements would gut enforcement. Rather, it would focus enforcement on those who would purposely flout the law.

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<sup>5/</sup> INS Commissioner Alan Nelson testified: "The Administration believes that many employers presently hire illegal aliens because they are aware that there is no law that makes this practice illegal. With the passage of an employer sanctions law we are confident that most employers -- as generally law abiding citizens -- will uphold the law." House Judiciary Subcommittee Hearings on Immigration Reform, October 21, 1981, p. 242.

The following elements are fundamental to a system that would meet the criteria I have outlined:

- Target enforcement on willful violators. This higher standard of proof, although more difficult for the government to establish, provides necessary protection to the good faith employer who may unknowingly hire an undocumented worker.
- Eliminate the mandatory verification procedure and substitute a voluntary procedure under which a complying employer would be provided with an affirmative defense against a charge of willfully hiring an undocumented worker.
- Provide tougher penalties against those who willfully violate. Because the standard of proof is higher, this would send a message to those who do willfully violate the law that noncompliance will be strictly punished.
- Locate the enforcement function solely within the Department of Justice, the agency best qualified to enforce this law fairly and efficiently.
- Create an Interagency Task Force, including the Attorney General, the Secretary of Labor, the Secretary of Commerce, the Chairman of the Equal Employment Opportunity Commission, and the Chairman of the U.S. Civil Rights Commission. The Task Force would be charged with coordinating, developing, and recommending policies and practices designed to maximize results, while promoting efficiency and compliance, and reducing possibilities of discrimination in carrying out the sanctions provision.



Lessons From the GAO Report on Employer Sanctions

In July of 1981, Senator Simpson requested the U.S. General Accounting Office (GAO) to identify countries with laws that currently prohibit employers from hiring illegal aliens and to point out any problems encountered in enforcing their laws.

The GAO issued its Report, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries" on August 31, 1982. The Report found that, in the 19 countries examined, the laws were not an effective deterrent to employment of illegal aliens for two primary reasons: (1) employers were able to avoid compliance and the penalties on those apprehended were too mild to deter noncompliance; and (2) the laws were not effectively enforced.

If these existing laws have not been effective in deterring illegal immigration, what are the implications for H.R. 1510? Will Congress be back in a few years demanding greater penalties, more money, more inspectors, and more intrusions into the private workplace to prove that employer sanctions can work? For example, we note that France recently passed a new law increasing penalties on employers who hire illegal aliens:

"[I]n addition to increasing the penalties that can be judicially applied, provides the Labor Ministry with an additional sanction it can take against employers -- confiscation of their tools and equipment." <sup>6/</sup>

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<sup>6/</sup> GAO Report, *supra*, p. 4.

CONCLUSION

For all of these reasons, we continue to oppose the employer sanctions as proposed in H.R. 1510. Nevertheless, we believe that if Congress, in its wisdom, concludes that some system of employer sanctions must be enacted, the recommendations we have proposed would much more effectively accomplish the goals it seeks.

We urge consideration of these recommendations in lieu of the present proposal, coupled with the recommendations we made in our earlier testimony:

- tighten procedures for obtaining and for using border crossing passes;
- tighten the procedures for obtaining and enforcing student and tourist visas;
- strengthen border enforcement;
- develop more and better cooperative programs between government and business to control illegal immigration.

Although we do not have legislative language to offer at this time, we would be pleased to work with members of this subcommittee in fashioning more equitable and effective methods of enforcing our immigration laws.

I appreciate the opportunity to testify today and would be happy to answer any questions.

Mr. MAZZOLI. Mr. Van Maren, you are recognized for 5 minutes.

Mr. VAN MAREN. I am James G. Van Maren, manager, agriculture and consumer affairs, representing the California Chamber of Commerce whose main offices are located in Sacramento, Calif.

The California Chamber of Commerce is a broad-based organization of 4,300 firms and corporations represented by 8,300 businessmen and women, and 150 trade associations. Our membership includes business, industry, and agricultural enterprises statewide.

The California Chamber has spent many dedicated hours studying the alien issue before arriving at a formal position. We have had a presentation by the Commissioner on Immigration followed by members of the staff under the Attorney General on the importance of enacting an immigration reform law and an understanding of the administration's position on the issue.

We have also sponsored a major luncheon in Los Angeles with Attorney General William French Smith as the speaker on the need for reform and revision of the Immigration and Nationality Act during 1982.

These meetings were followed by a meeting of an ad hoc committee, who represents the broad-based interest of business, wherein policy and recommendations were formalized to submit to our board of directors. The board deliberated on this policy and it was adopted in the spring of 1982.

The board also notes that agriculture is California's principal industry supporting the Nation's No. 1 industry.

The policy adopted by our board supports a program of amnesty for illegal aliens already in this country as a step toward controlling undocumented aliens; we support a definitive documentation procedure to determine citizenship; we support expansion of the H-2 program to better accommodate a temporary worker program; and we oppose sanctions against employers unless there is a definitive documentation procedure that will not make the employer a policeman and there is a temporary worker program in place.

We further support the strengthening of our borders for the purpose of stopping the movement of illegal aliens into this country. In effect, this action in itself would reduce the need of punitive remedies against employers who are found to be hiring illegal aliens.

As the enforcement of immigration laws tighten down, the pressure on those individuals outside our borders who want to come to the United States, generally to take advantage of our freedom and economic conditions, will become more sophisticated in their attempts.

Therefore, it would be better to provide some type of special worker program to relieve that pressure. It is a proven fact that workers of foreign descent are more willing to work in highly-labor intensive jobs.

The American work force just does not seem to adapt themselves to highly labor intensive conditions. If Congress changes the immigration laws by adopting severe restrictions on employers and illegal aliens, perhaps there should be a phase-in procedure so that the American work force might be trained to work in highly labor-intensive jobs.

A severe change in the law could have a major adverse effect on the present labor force in this country.



H.R. 1510, "Immigration Reform and Control Act of 1983" is opposed by the California Chamber unless amended. We feel that this bill does not provide a workable package for a new approach in immigration law.

The California Chamber is concerned that it would have a major adverse effect on California's employers and working force. Therefore, we propose the following changes.

Amending Section 211, "H-2 Workers," is essential. The proposed language provides for good, flexible opportunities in the use of regulations to deal with the more transit problems. Yet, we strongly suggest the following amendments.

One, a definition for "labor dispute."

It is important that a definition for "labor dispute" be included under the legislation. Under the Department of Labor's and the Immigration and Nationality Service's definition of a labor dispute, any two or more persons at the job site can create a labor dispute.

In California where major agricultural unions exist, such a definition could easily block many employers from participating under the H-2 program. We support the following definition of "labor dispute": A labor dispute shall be deemed to exist at any jobsite when 50 percent or more of the bona fide agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours, and working conditions.

A labor dispute shall be deemed to have terminated when less than 50 percent of the agricultural employees of the employer remain on strike, but in no case shall the labor dispute survive the term of employment. A labor dispute shall bar replacements only for the number of strikers actually on strike.

Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met. Upon application of any interested party, the Secretary of Labor shall, within three days where possible but not more than five days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

Two: Since the undocumented worker is the responsibility of the immigration service, any petitions and certifications by employers under the H-2 program should be under the authority of the Attorney General, who when promulgating regulations, will consult with the Secretary of Agriculture and the Secretary of Labor.

Three: Establish an advisory committee to consult with and advise the Attorney General regarding the temporary work force of legal aliens.

Four: Legal alien workers should be recruited for work upon petition of individual employers or associations of like employers, and assigned to work for, with provisions for transfer."

[The complete statement follows:]

Statement of the California Chamber of Commerce  
to  
Immigration, Refugee and International Law Subcommittee  
House Judiciary Committee  
on  
HR 1510 (Mazzoli) "Immigration Reform and Control Act of 1983"  
March 9, 1983

I am James G. Van Maren, Manager, Agriculture & Consumer Affairs, representing the California Chamber of Commerce whose main offices are located in Sacramento, California. The California Chamber of Commerce is a broad-based organization of 4,300 firms and corporations represented by 8,300 businessmen and women, and 150 trade associations. Our membership includes business, industry and agricultural enterprises statewide.

The California Chamber has spent many dedicated hours studying the alien issue before arriving at a formal position. We have had a presentation by the Commissioner on Immigration followed by members of the staff under the Attorney General on the importance of enacting an immigration reform law and an understanding of the Administration's position on the issue. We have also sponsored a major luncheon in Los Angeles with Attorney General William French Smith as the speaker on the need for reform and revision of the Immigration and Nationality Act during 1982. These meetings were followed by a meeting of an Ad Hoc Committee, who represents the broad-based interest of business, wherein policy and recommendations were formalized to submit to our board of directors. The board deliberated on this policy and it was adopted in the Spring of 1982.

The policy adopted by our board supports a program of amnesty for illegal aliens already in this country as a step toward controlling undocumented aliens; we support a definitive documentation procedure to determine citizenship; we support expansion of the H-2 program to better accommodate a temporary worker program; and we oppose sanctions against employers unless there is a definitive documentation procedure that will not make the employer a policeman and there is a temporary worker program in place. We further support the strengthening of our borders for the purpose

of stopping the movement of illegal aliens into this country. In effect, this action in itself would reduce the need of punitive remedies against employers who are found to be hiring illegal aliens.

As the enforcement of immigration laws tighten down, the pressure on those individuals outside our borders who want to come to the United States, generally to take advantage of our freedom and economic conditions, will become more sophisticated in their attempts. Therefore, it would be better to provide some type of special worker program to relieve that pressure. It is a proven fact that workers of foreign descent are more willing to work in highly labor intensive jobs. The American work force just does not seem to adapt themselves to highly labor intensive conditions. If Congress changes the immigration laws by adopting severe restrictions on employers and illegal aliens, perhaps there should be a phase-in procedure so that the American work force might be trained to work in highly labor intensive jobs. A severe change in the law could have a major adverse effect on the present labor force in this country.

HR 1510 - "Immigration Reform and Control Act of 1983" is opposed by the California Chamber unless amended. We feel that this bill does not provide a workable package for a new approach in immigration law. The California Chamber is concerned that it would have a major adverse effect on California's employers and working force. Therefore, we propose the following changes.

Amending Section 211 - "H-2 Workers" is essential. The proposed language provides for good, flexible opportunities in the use of regulations to deal with the more transit problems. Yet, we strongly suggest the following amendments.

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"It is important that a definition for 'labor dispute' be included under the legislation. Under the Department of Labor's and the Immigration and Nationality Service's definition of a labor dispute, any two or more persons at the job site can create a labor dispute. In California where



major agricultural unions exist, such a definition could easily block many employers from participating under the H-2 program. We support the following definition of 'labor dispute': A labor dispute shall be deemed to exist at any job site when 50 percent or more of the bona fide agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions. A labor dispute shall be deemed to have terminated when less than 50 percent of the agricultural employees of the employer remain on strike, but in no case shall the labor dispute survive the term of employment. A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met. Upon application of any interested party, the Secretary of Labor shall, within 3 days where possible but not more than 5 days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

2. Since the undocumented worker is the responsibility of the immigration service, any petitions and certifications by employers under the H-2 program should be under the authority of the Attorney General, who when promulgating regulations, will consult with the Secretary of Agriculture and the Secretary of Labor.
3. Establish an advisory committee to consult with and advise the Attorney General regarding the temporary work force of legal aliens.
4. Legal alien workers should be recruited for work upon petition of individual employers or associations of like employers, and assigned to work for specific employers, with provisions for transfer.
5. The reasonable efforts of an employer to recruit American citizens to fulfill the job requirements within the recruitment area, including filing a job order

with the Federal-State Employment Service prior to recruiting legal aliens.

6. The temporary worker program should be open to all countries willing to commit themselves to participate.
7. Legal alien workers should receive no less than minimum wage and normal working standards except as follows: Workers should not be eligible for unemployment compensation, welfare, food stamps, federally assisted housing and spouses and children of workers may not accompany them under the program. We are opposed to the adverse wage rate concept as unfair to those who are receiving minimum wage.
8. Legal alien workers and their employers should be exempted from contributing to state or federal programs for which the legal alien worker is not qualified to receive the proscribed benefits.
9. Legal alien workers should pay for their own transportation costs from their countries of origin to the United States to the place of employment and for their room and board while they are under the temporary worker program.
10. Legal alien workers should pay a reasonable fee into a special fund to cover costs of returning to their countries of origin.
11. The administering federal agency should be given authority to charge employers, who participate in the temporary worker program, a reasonable fee up to a maximum amount equal to the fee normally established for FICA and FUTA to cover the direct costs of administering the program based on the legal alien worker's gross salary."

If there is to be tightening of immigration laws, it is important to have a release cap...the seasonal worker program in addition to the modified H-2 program. The seasonal worker program would be established on the same bases as the recommended modified H-2 program proposed earlier. The only exception to the list of criteria would pertain to #4 and that would be as follows: Legal alien workers should be recruited for work upon petition of individual employers or associations of like employers and be permitted to freely move from job site to job site. California

agriculture has unique problems when in some areas of the state farmers rotate crops up to three times a year. Many of these crops could require, within days, 300 to 600 workers to harvest very perishable crops. Employers hiring under these conditions are not concerned about national origin of the worker, but rather the need for able-bodied, willing workers now. A seasonal worker program would fill that important need.

We have major concerns with Section 274(A)... "Unlawful Employment of Aliens". The California Chamber feels employers should not become policemen challenging individuals applying for work as to whether or not they are citizens of the United States. We believe that employers are working very hard to alleviate discrimination in their hiring practices. This proposed legislation is requiring "the individual must attest, under penalty of perjury.. that the individual is a citizen or national of the United States..." establishes a heavy burden on the shoulders of employers. This requirement of employers may result in employers firing or not hiring good, hard working Americans because they may appear to be aliens when they are truly citizens of the United States. Therefore employers should require definitive documents to determine citizenship for hiring purposes which would provide the basis of a value judgment, by the employer, in relieving the employer of any liability in the event an employee misrepresents such documentation.

The bookkeeping requirements designated under the proposed legislation require the employers to keep records of the documentation certifying citizenship; and the form providing verification of the employer's recognition of the employees citizenship shall be kept on file for a period of three years. Employers should not be required to maintain a record of individuals recruited or referred for hiring purposes. Employers should only maintain a record of employees hired. Employers should not be required to attest under penalty of perjury that the individual he has hired is a citizen or national of the United States. It is the responsibility of the immigration officials to determine whether or not any individual is a citizen or a national of the United States if that question should be raised.



The sanction provisions under Section 274(A) need balancing. The California Chamber opposes the proposed sanction provisions under this legislation unless there can be provided a modified H-2 program and an easing of the responsibilities placed on the employer when hiring employees.

Holding employers responsible for the validity of documents to establish citizenship is wrong. On September 8, 1981, the GAO noted that social security cards are "commonly" counterfeited or stolen by persons illegally in this country or by U.S. citizens receiving unearned benefits. It is also our understanding that it is not that much of a problem to purchase any illegal documents at a price. Here again, the employer should not be the policeman, it should be the responsibility of the immigration service to determine validity of citizenship documents. The California Chamber does not condone the practice of knowingly hiring illegal aliens.

It is essential that no state should be permitted to interfere with the operation of the H-2 program or other temporary worker programs. We feel that these are national programs and federal preemptions should be safeguarded.

We appreciate the opportunity to present our views and strongly urge the Committee to give full and careful consideration to our recommendations. We subscribe to the idea that the Immigration and Nationality Act needs revision and reform to have better control over the movement of illegal aliens in these United States, yet no law should provoke disarray and confusion in our hiring practices.

#### Conclusion

Permit me to repeat that the California Chamber supports a modified H-2 program. Employers should have a simple and reasonable documentation procedure requirement which would not make them policemen. Sanctions currently proposed under HR 1510 are not acceptable unless there is in place a temporary worker program and a more reasonable documentation procedure required of employers when hiring employees. Thank you.

Mr. MAZZOLI. I am sorry to bother you.

As I was looking through your statement in addition to changes in H-2, you advocate, a seasonal worker program in addition to H-2.

Mr. VAN MAREN. That is correct.

Mr. MAZZOLI. You also suggest, as I think one of the other panelists had, that the employer not be the sole enforcer here and not have the full responsibilities. You mentioned about the bookkeeping requirements, which is another area to be amended, in your view.

Mr. VAN MAREN. One of the most important areas we feel is the burden that would be placed on the employer. We feel that the employer is put in a very severe position.

Sanctions. We indicated we accept those provided we could have the relief valve of the H-2 program and a seasonal worker program and some relief in the paperwork and the documentation procedures.

Mr. MAZZOLI. Thank you very much, sir.

Mr. Von Mehren, you are welcome for 5 minutes.

Mr. VON MEHREN. Thank you, Mr. Chairman. I am George Von Mehren, vice chairman of the Immigration Committee of the National Foreign Trade Council, Inc. The council is a non-profit association of over 600 companies engaged in international trade and investment.

Our member companies are responsible for more than half of the manufactured goods and services exported by the United States. These companies use immigration to bring executive, managerial and technical talent to the United States. These companies use immigration to create jobs in the United States, not to increase the number of persons competing for existing jobs.

Our real interest here is that we have an immigration system where American companies can bring these people to the United States easily and efficiently and quickly.

With respect to employer sanctions in the bill, the council does not oppose provisions which make it unlawful to hire illegal aliens. However, the verification and record-keeping requirements imposed on employers should not be unduly burdensome.

With respect to permanent residents, we actually prefer the independent immigrant group which is in the Senate bill. However, if the current system is to be retained, we urge that the third preference category have additional visa numbers allocated to it to show that American business can bring these highly skilled people here more quickly and more easily.

Second, we urge that executives and managers, at least those who would qualify now for L-1 status, be expressly included within the definition of eligibility for third preference status.

With respect to foreign students, the council favors the waiver provisions allowing foreign students with advanced degrees in high technology fields to remain in the United States to work or teach rather than to leave for two years. We favor the absence of a numerical limit on the annual availability of these waivers.

On labor certification, the council favors the use of nationwide job market data, but urges amendment of H.R. 1510 to require the Department of Labor to conduct an individual case review when

the employer claims that, despite nationwide data, no U.S. employee is willing and able to do a particular job.

With respect to visa waivers for certain tourists, the council favors the pilot program waiving the tourist visa requirements for five countries but urges that the program apply to more countries. For countries which have a low abuse rate, the tourist visa requirement unnecessarily restricts the ability of the United States to compete in the tourist industry.

The National Foreign Trade Council, Inc. appreciates this opportunity to appear before the committee.

Mr. MAZZOLI. Thank you, Mr. von Mehren. You win first place. You have 2 minutes left. I think no one reined themselves in as nicely as you have.

Not to steal Mr. Knicely's name. That is not meant to be a pun. [The complete statement follows:]

PREPARED STATEMENT OF GEORGE M. VON MEHREN, NATIONAL FOREIGN TRADE COUNCIL, INC.

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EMPLOYER SANCTIONS

The Council does not oppose provisions which make it unlawful to hire illegal aliens. However, the verification and record-keeping requirements imposed on employers should not be unduly burdensome.

THIRD PREFERENCE

The Council favors amendments which would assist American business in employing highly skilled foreign nationals who will contribute to the U.S. economy. First, we favor allocation of 20,000 additional visas to the third preference category each year. Second, we urge that "executives and managers" who would qualify for L-1 status be expressly included within the definition of eligibility for third preference status.

FOREIGN STUDENTS

The Council favors the waiver provisions allowing foreign students with advanced degrees in high technology fields to remain in the U.S. to work or teach, rather than to leave the U.S. for two years. We favor the absence of a numerical limit on the annual availability of these waivers.

LABOR CERTIFICATION

The Council favors the use of nationwide job market data but urges amendment of H.R. 1510 to require the Department of Labor to conduct an individual case review when the employer claims that, despite nationwide data, no U.S. employee is willing and able to do a particular job.

VISA WAIVERS FOR CERTAIN TOURISTS

The Council favors the "pilot program" waiving the tourist Visa requirements for 5 countries but urges that the program apply to more countries. For countries which have a low abuse rate, the tourist visa requirement unnecessarily restricts the ability of the United States to compete in the tourist industry. The Council also supports the L-1 program changes in process.

The National Foreign Trade Council Inc. appreciates this opportunity to appear before the Committee.



Mr. MAZZOLI. We welcome Mr. Toohey. Before you came in, in order to get our business expedited, we limited each of the gentlemen to 5 minutes. We recognize you for 5 minutes.

Mr. TOOHEY. Mr. Chairman, it is a pleasure to appear before you today in support of section 213 of H.R. 1510, visa waiver for nonimmigrant visitors.

I have a strong desire to stay within the 5 minutes imposed by the committee. I would like to insert the entire statement and excerpt parts of it.

Mr. MAZZOLI. Very good. Each of your statements is a part of the record.

Mr. TOOHEY. My name is William D. Toohey, and I am president of the Travel Industry Association of America or TIA.

Tourism in America is served by nearly a million different businesses that offer a wide range of services to the traveling consumer. Some of these businesses are organized nationally by industry component and are represented by trade associations that promote and protect their specialized interests.

To represent the broad base of tourism, however, the Travel Industry Association of America deals with matters of interest to all in the travel, tourism, and recreation industry. I am also appearing today in my capacity as vice chairman of the Travel and Tourism Government Affairs Council, an affiliate of TIA.

The council is the national organization representing the unified travel industry viewpoint on legislative and regulatory issues of common concern. The council represents every major segment of the industry, including airlines, hotels, restaurants, buses, attractions and tour sales. Our membership comprises 28 of the largest travel and tourism national trade organizations.

The travel industry is now the second largest retail industry in the United States, having generated in 1981, \$191 billion in receipts and \$17.9 billion in Federal, State, and local tax revenues.

It directly employs 4.6 million Americans at every level of skill and indirectly provides another 2.2 million supporting jobs.

At a time when the service sector of our economy accounts for the greatest employment growth, travel is one of the most labor-intensive service industries and employs those who most need jobs and traditionally have the most difficulty finding them.

I cite these figures in order to convey some understanding of our industry and its importance to a healthy economy and full employment.

The U.S. travel and tourism industry has for decades advocated the passage of nonimmigrant visa waiver legislation. As time passes, our commitment to reaching this goal continues to grow.

Passage of legislation such as that represented by section 213 is a priority objective of the council for 1983, as it was in 1982. With effective and viable visa waiver legislation, inbound tourism will increase, as will tourism-related employment, as will tax revenue generated by tourism.

Inbound foreign travel plays a significant role in the contribution of travel and tourism to the U.S. economy. In 1981, for example, 23 million international tourists spent \$12.2 billion in the United States.

To lend perspective to these figures, Mr. Chairman, in the next 60 seconds international visitors will spend \$23,212 in this country on U.S. goods and services. In the next 60 seconds, 44 international visitors will arrive at a U.S. gateway.

The expenditures of only 54 international visitors will create 1 new job. Incidentally, the travel industry was responsible in 1981 for almost 20 percent of the total increase in U.S. employment. Indeed, the increase in employment since 1973 in eating and drinking places alone is greater than total employment in the automobile and steel industries combined.

International visitors contributed \$1.1 billion in Federal, State, and local tax revenues in 1981. The Federal Government alone receives \$1,114 every minute from foreign visitor spending in the United States.

While these are impressive figures, it must also be noted that while foreign tourism to the United States has increased, the U.S. share of the world tourism market has not. Indeed, U.S. international tourism receipts have not only grown at a slower rate than world receipts, the U.S. share of these receipts has steadily declined—from 13 percent in 1976 to 10.6 percent in 1982.

This decline is far more significant than it might initially appear. Each percentage point translates into a loss in receipts of \$1 billion, \$95 million in tax receipts and almost 30,000 jobs.

It is this decline coupled with the massive economic potential of inbound foreign tourism that accounts for our enthusiastic support for section 213.

It should also be emphasized that current law is among the most restrictive in the world while more than 80 countries do not require visas for U.S. travelers on short-term business or pleasure trips.

This hardly seems consistent with U.S. efforts to eliminate non-tariff trade barriers while encouraging free, open, and reciprocal international trade.

We believe that the citizens of neighboring countries, Western Europe and other designated nations are fully justified in expecting to be treated as they treat American visitors to their own countries. The procedures to which we presently adhere, by nature, suggest an unfriendly attitude and undue suspicion.

Conversely, much public and private good, both economic and cultural, could be achieved by the adoption of section 213. This provision, which would require the purchase of a roundtrip, nonrefundable ticket, would play an integral part in the public and private effort to attract more foreign visitors to our shores.

We cannot overemphasize the importance of implementing this proposal in 1983. The impact on attendance of the 1984 Summer Olympic Games in Los Angeles and the Louisiana World Exposition would be radically improved with timely passage of this proposal.

We were gratified that for the first time, this committee favorably reported a visa waiver provision last year, but because of these two major events, we are hopeful that passage in both Houses will be secured this year.

On behalf of the Travel and Tourism Government Affairs Council and TIA, I would like to thank the subcommittee for providing



us with this opportunity to present our views on section 213 and we strongly urge this subcommittee to take all appropriate steps to insure enactment of this provision.

Mr. Chairman, we appreciate the opportunity to present this information to you.

[The complete statement follows:]

PREPARED STATEMENT OF WILLIAM D. TOOHEY, PRESIDENT, TRAVEL INDUSTRY ASSOCIATION OF AMERICA, AND VICE CHAIRMAN, TRAVEL AND TOURISM GOVERNMENT AFFAIRS COUNCIL

Mr. Chairman, and members of the subcommittee, it is both a pleasure and an honor to appear before you today in support of section 213 of H.R. 1510—Visa Waiver for Nonimmigrant Visitors.

My name is William D. Toohey, and I am President of the Travel Industry Association of America or TIA. The Travel Industry Association fills a unique need that stems from the industry's own diverse nature. Tourism in America is served by nearly a million different businesses that offer a wide range of services to the traveling consumer. Some of these businesses are organized nationally by industry component and are represented by trade associations that promote and protect their specialized interests. To represent the broad base of tourism, however, the Travel Industry Association of America deals with matters of interest to all in the travel, tourism and recreation industry. I am also appearing today in my capacity as Vice Chairman of the Travel and Tourism Government Affairs Council, an affiliate to TIA.

The Council is the national organization representing the unified travel industry viewpoint on legislative and regulatory issues of common concern. The Council represents every major segment of the industry, including airlines, hotels, restaurants, busses, attractions and tour sales. Our membership comprises 28 of the largest travel and tourism national trade organizations.

The travel industry is now the second largest retail industry in the United States, having generated (in 1981) \$191 billion in receipts and \$15.6 billion in Federal, State, and local tax revenues. It directly employs 4.5 million Americans at every level of skill and indirectly provides another 2.2 million supporting jobs. At a time when the service sector of our economy accounts for the greatest employment growth, travel is one of the most labor-intensive service industries and employs those who most need jobs and traditionally have the most difficulty finding them. I cite these figures in order to convey some understanding of our industry and its importance to a healthy economy and full employment.

The U.S. travel and tourism industry has, for decades, advocated the passage of nonimmigrant visa waiver legislation. As time passes, our commitment to reaching this goal continues to grow. Passage of legislation such as that represented by section 213 is a priority objective of the Council for 1983, as it was in 1982. With effective and viable visa waiver legislation, inbound tourism will increase, as will tourism-related employment, as will tax revenue generated by tourism.

Inbound foreign travel plays a significant role in the contribution of travel and tourism to the U.S. economy. In 1981, for example, 23 million international tourists spent \$12.2 billion in the United States. To lend perspective to these figures, Mr. Chairman, in the next 60 seconds international visitors will spend \$23,212 in this country on U.S. goods and services. In the next 60 seconds 44 international visitors will arrive at a U.S. gateway. The expenditures of only 54 international visitors will create one new job. Incidentally, the travel industry was responsible in 1981 for almost 20 percent of the total increase in U.S. employment. Indeed the increase in employment since 1973 in eating and drinking places alone is greater than total employment in the automobile and steel industries combined.

International visitors contributed \$1.1 billion in Federal, State and local tax revenues in 1981. The Federal Government alone receives \$1,114 every minute from foreign visitors spending in the U.S.

While these are impressive figures, it must also be noted that while foreign tourism to the U.S. has increased, the U.S. share of the world tourism market has not. Indeed U.S. international tourism receipts have not only grown at a slower rate than world receipts, the U.S. share of these receipts has steadily declined—from 13 percent in 1976 to 10.6 percent in 1982. This decline is far more significant than it might initially appear. Each percentage point translates into a loss in receipts of \$1 billion, \$95 million in tax receipts and almost 30,000 jobs.



It is this decline coupled with the massive economic potential of inbound foreign tourism that accounts for our enthusiastic support for section 213. We believe that the prudent changes in our present visa requirements, along the lines proposed by this subcommittee, would be an important step toward improving our competitive position in the world tourism market.

In addition, the pilot program envisioned by section 213 would extend applicability to five countries, approved by the Attorney General and Secretary of State, where visa refusal rates are under 2 percent. This will allow the U.S. to benefit from an increase in tourism from those countries without compromising our national security or overburdening enforcement mechanisms.

It should also be emphasized that current law is among the most restrictive in the world while more than 80 countries do not require visas for U.S. travelers on short-term business or pleasure trips. This hardly seems consistent with U.S. efforts to eliminate non-tariff trade barriers while encouraging free, open and reciprocal international trade. We believe that the citizens of neighboring countries, Western Europe and other designated nations are fully justified in expecting to be treated as they treat American visitors to their own countries. The procedures to which we presently adhere, by nature suggest an unfriendly attitude and undue suspicion.

Conversely, much public and private good, both economic and cultural, could be achieved by the adoption of section 213. This provision, which would require the purchase of a roundtrip, nonrefundable ticket, would play an integral part in the public and private effort to attract more foreign visitors to our shores. We cannot overemphasize the importance of implementing this proposal in 1983. The impact on attendance of the 1984 Summer Olympic Games in Los Angeles and the Louisiana world exposition would be radically improved with timely passage of this proposal. We were gratified that, for the first time, this committee favorably reported a visa waiver provision last year, but because of these two major events, we are hopeful that passage in both Houses will be secured this year.

On behalf of the Travel and Tourism Government Affairs Council and TIA, I would like to thank the subcommittee for providing us with this opportunity to present our views on section 213 and we strongly urge this subcommittee to take all appropriate steps to ensure enactment of this provision.

Mr. MAZZOLI. I think most of you have been before our panel at one time or another over the years and we thank you for your help.

I yield myself 5 minutes to begin the questions. Is any one of you in a time bind of any kind? [No response.]

If not, we will certainly expedite the questions.

I yield myself 5 minutes and begin with one statement to Mr. Brown.

On page 3 of your statement you say that the effect of the bill is to lump urgently needed technical people and managers and professionals with skilled workers such as stonemasons and governesses. Do you think that professionals rather than skilled people more directly benefit our Nation's economy to help create new industries?

It happened that my father was a stonemason, so I want you to know that you could not have picked a worse description. I do think my daddy contributed to America when he came here, so I am not sure that you have to be a Ph. D. engineer.

I think maybe occasionally stonemansons should be welcome. I say that lovingly, not to suggest any feeling on my part toward you.

Let me thank all of you for a very constructive testimony.

Some of our witnesses are saying no, but not offering much of an alternative. Each of you has. Particularly with the question of sanctions, the Chamber has, I am sure, wrestled long and hard. I am sure it has not been easy to reach the position in your statement, Mr. Thompson. I thank you for that.

Of course, NAM was active last year, which was particularly helpful to us and we thank you all for maintaining that position.

Mr. THOMPSON. Mr. Chairman, I think you know, but if you don't, I want to be sure that the record reflects this. We commissioned a study of this subject which has been done and is available.

I hope you have it, to try to find what we would consider a more acceptable solution. We are also continuing to study this employer sanctions area.

We think we may within the next few weeks be able to give you some further detailed recommendations which I would like to reserve that privilege to do.

Mr. MAZZOLI. I would earnestly love to see those. The idea of targeting enforcement is something which does not grate my sensibilities too hard. If it is feasible, maybe something like that is worth our looking at.

Mr. THOMPSON. Thank you.

Mr. MAZZOLI. Mr. Bernsen, you say, and I think perhaps Mr. Von Mehren talked about this also, the idea of labor certification as used in a schedule as against individual certifications. Give me just a few seconds on that, Mr. Bernsen.

Is there anything magical about the use of schedules? Is there anything that would be pernicious about relying totally on them?

You say there should be some alternative.

Mr. BERNSEN. Exclusive reliance on scheduling would shut out labor certifications for employers in areas where there are clearly job shortages. We think that we need side by side with an expanded scheduling, an opportunity for the employer to establish that there is a shortage of the worker that he is seeking because of special job requirements.

We think we need them side by side.

Mr. MAZZOLI. Can you give me, Mr. Von Mehren, an example of what you say would be maybe one of those jobs that does not fit a general category?

You suggest that there might be some kind of jobs that would not be filled if you relied only on a national schedule?

Mr. VON MEHREN. Yes, sir. I think there are, at least, two problems.

One problem is if the Department of Labor says there are enough nuclear physicists in the country and that may be true of Boston and California, and so forth. The company in Cleveland, Ohio, that needs to hire a nuclear physicist may not find him available, so the job goes unfilled and they can't bring in the foreign national who is willing to do it.

Mr. MAZZOLI. One of you has suggested that you want to say to the Labor Department that makes the survey that you may have made a mistake because in Cleveland, Ohio, or Louisville, Ky., we do not have an available nuclear physicist. Could you make a detailed study of that locality? Is that what you plan for?

Mr. VON MEHREN. It would not be a mistake by the Department of Labor. It would just be that the information was not targetted to the particular problem that the company has.

Mr. MAZZOLI. I see.

Mr. VON MEHREN. The second example I think is the situation where you have a nuclear physicist available, but the person does



not have background and training in some subject category which is extremely important for the company.

Mr. MAZZOLI. The nuclear physicist may not fit your bill even though that is his or her degree, because there is a subset in there?

Mr. VON MEHREN. I don't know about nuclear physicists, but there are a lot of jobs where that is the case.

Mr. MAZZOLI. My time has expired. I yield to the ranking member from California.

Mr. LUNGREN. Thank you, Mr. Chairman, and I would like to echo your remarks of greeting and appreciation for the efforts of those of you on the panel, to try and articulate where you agree with the bill and also those areas where you disagree and have attempted to come up with some alternatives.

I would like to address this to those members of the panel that referred to the employer sanction section, particularly with respect to paperwork requirements.

Let me first address it to you, Mr. Van Maren. In your testimony you referred to the requirement that the individual must attest under penalty of perjury that he or she is a citizen, national of the United States, that is permanent resident, or otherwise authorized to work here. You stated that this requirement establishes a heavy burden on the shoulders of employers.

The statutory requirement you cite specifically applies to the employee, that is with respect to stating under penalty of perjury that they are able to work. That is the requirement that extends to the employee and to the document that he then signs.

The employer does not have that. The standard for the employer is one of good faith. The application of the provision is to the employee rather than the employer. The good faith defense is available to the employer who merely follows the paperwork verification requirement.

In other words, as long as he maintains the paperwork, two pieces of paper in the file and has made a good faith effort to verify, meaning that he looks at the documents just so that they don't look like they have been printed on the Xerox machine down the street, haven't we placed the reasonable burden on the employer and a tougher, but also reasonable burden on the employee?

Mr. VAN MAREN. I would say that that would be true and I apologize if that was my misinterpretation on reading the statute. I suppose that when I read it I read it in the context of the employer.

Maybe I am a little sensitive to the employer's position.

Mr. LUNGREN. You have every right to be.

Mr. VAN MAREN. But if the employee is the one who is put in the position of attesting to his citizenship or whether he is a national of the United States, obviously shifts that burden to the employee and then I suppose we would feel much more comfortable with that type of a position for the employer.

But I want to be sure that the employer is not overburdened with maintaining too much paperwork for even interviews or referrals.

I feel that the employee that is actually hired by that employer and does provide certain documentation, we understand that the employer does have certain responsibilities in keeping that materi-



al on file but just an interview or referral, I have some questions on that.

Mr. LUNGREN. The way we have written the bill, if you are referring or recruiting for hire, in other words, if that is your business for pay, then you have to keep those documents.

If you are the ultimate employer, all you have to do is keep the documents with respect to those people that you have actually employed. And I guess what I am doing is addressing this question to the panel.

If you accept that we are going to have an employer sanction of some sort and I know there is some debate on that, but if you accept the fact that this is an inevitability, is there anything that you can tell us that is unduly onerous or burdensome in this setup where the employer has to keep two pieces of paper, the employer would sign a piece of paper saying that he has verified the identification shown by the employee, that is, a good faith verification of the documents signed by the employee saying under penalty of perjury I have right to be here in the United States to work.

It is not a citizenship requirement. I have a legal right to be here in the United States. That goes into the employment file, the personnel file that you maintain on your employees. If you have three or less employees, you don't have that paperwork burden because we understand ma and pa stores.

The existence of that paperwork provides you an affirmative defense if any action is brought against you by the Government.

What I am trying to find out is if you find that unduly burdensome, No. 1; and No. 2, if you can give us an alternative to that if you find that not to be appropriate.

Mr. THOMPSON. On behalf of the U.S. Chamber of Commerce, I would respond that we do find that unduly burdensome. We think it will create an unnecessary and unworkable paperwork load on businesses of all sizes, but especially small businesses.

There are millions of small businesses that employ more than three people in this country. We also think that it is unnecessary.

You are requiring millions and millions of employers to keep records in an effort to get at perhaps thousands or maybe at the most a million employers who might cross this line or have some problem with this particular issue.

We suggest as a possible alternative, although we think the employer sanctions section in its entirety is objectionable, in the interest of trying to be constructive and positive. We have suggested that some system of targeting of employers would be a more practical approach and probably a more effective approach given the limited resources of the Federal Government.

I have personally suggested to the chairmen of these two committees, the Senate and the House, that it seems to me the first step in all of this would be to simply make it illegal to knowingly employ aliens.

I heard the earlier testimony and remarks I think that someone on the panel made that we are the only country in the world that does not even go that far.

I have no quarrel whatsoever with a law which would simply provide that it is a crime of some kind to knowingly employ illegal aliens. That has been rejected as being unworkable because of the

law enforcement problems it would create without the employer sanctions.

But what we have suggested is this in general terms, that where you have employers who clearly have a tendency to employ illegal aliens, put the burden on them. Put them on probation. Put them on some kind of a recordkeeping system that could be checked periodically to see if they are living within the law or whether they are not.

If that does not satisfy what you are out to do, then maybe you ought to go at it like the voting rights law was written and that is pick out areas of the country or areas in States where this is a particularly difficult problem and put your sanctions into effect there.

I never have thought too much of the Voting Rights Act from the part of the country I am from, but it seems to me it was a solution that Congress, in its wisdom, found to a problem, so that you did not have to go nationwide with something that was very difficult for people to learn to live with.

Mr. LUNGREN. I appreciate that. Let me just make one comment and then ask again.

That is, we are between a rock and a hard place here.

Mr. THOMPSON. I understand that.

Mr. LUNGREN. One of the reasons is that if you target, and I have not discussed this with the chairman, but if you target it in those areas where you think you are going to find more illegal aliens than others, you run into a problem of discrimination.

Let's face it. The largest percentage of illegal aliens here are Hispanic. That is a fact of life. Mexico happens to be on our border.

I am very, very leery of doing anything of a targeting nature that would have the consequence of affecting those people that are of a Hispanic nature.

That is one of the reasons why we expanded it to everybody. It does impose a paperwork requirement on the employer, but frankly, I think it is the only way of getting around the possibility of discrimination.

The second thing is that I appreciate your comment that it is undoubtedly burdensome, but for the life of me I can't understand how this is so with a company that maintains a personnel file. You have to maintain some sort of personnel file because at least you have to keep W-2 forms if you are within the requirements of the law right now.

Why is keeping two additional pieces of paper under a procedure that will probably take you 30 seconds or 1 minute unduly burdensome?

Maybe that is because I am not an employer right now and I don't realize it.

Mr. MAZZOLI. When the Chairman limits himself to 5 minutes, we should limit everybody to 5 minutes.

Mr. Knicely had something to say and then we must move on. We cannot dominate the time.

Mr. THOMPSON. Let me say in answer to your reference to just two more pieces of paper, in real life I am a practicing labor lawyer and I represent employers and, please be assured that the average small employer does not keep personnel files and does not have a



lot of elaborate systems for keeping records on all these kinds of things.

If you add to what he already must keep in the way of records in the way of withholding taxes and all this sort of thing, this is very likely, I think, to be burdensome.

Mr. MAZZOLI. Burdensome is like beauty. It is in the eye of the beholder in many cases. But I accept that.

Mr. THOMPSON. You can let your accountant keep tax records, but to add this is something else. Let me make one last suggestion and I won't say another word unless you ask me a question.

We also would suggest to you that you look at the possibility of making this system that you have developed a voluntary system when an employer wants to establish a good faith defense. In other words, make it available to him but not necessarily require it.

Mr. MAZZOLI. That was a question I was going to ask you, Mr. Knicely, to wrap up on these questions.

Mr. KNICELY. If I may, to speak on behalf of the Business Roundtable and the NAM, but also the vice president of personnel of a major company that is also very concerned about the sanctions and the administrative burden of this kind of legislation.

I can speak for all three, that in our judgment we don't think that this is going to be an unmanageable burden and that is exactly what we want to make sure does not happen. I think as long as we do recognize the realities of the work place so that this does not become a real administrative burden for us and the burden of demonstrating compliance does not rest with the employer. That is why we were very concerned about the spelling out of the legislation, really, what good faith constitutes.

If good faith constitutes reviewing the identification document and producing and retaining that verification form, then I think I can say, speaking on behalf of a professional who has several hundred plants where we have a concern about the paperwork flow and administration at very small location; that is, we think that we could administer this in the right way as long as that burden is not placed on us at the local level.

That is our concern.

Mr. MAZZOLI. Thank you very much.

The gentleman from Florida is recognized for 5 minutes.

Mr. MCCOLLUM. Thank you. I want to compliment the gentlemen for coming to us and presenting to us some specific suggestions for matters that we find deficient.

It is apparent to all of us who have been working so long on this issue that we have got to do something to stop the flow of illegal aliens into this country besides enforcement at the border if we are going to preserve the quality of life that has made this Nation great.

That is why we have had difficulty with some of the members of the panels and organizations in the last couple of years. Though respecting the difficulties they have expressed to us, the weighing of the equities in terms of coming out with some solutions require some give and take which you are giving to us today and I, for one, express gratitude for that.

I would like to pursue something a little bit and comment on it in a question form. The issue that we have been discussing with



regard to keeping paperwork has been framed in the idea that there is discrimination involved or if we don't do it that that is a primary motive for requiring paperwork.

For one Member who voted last year on this subject, that was not the primary reason, although I was certainly concerned about discrimination as I am throughout all of the efforts we are making on this bill.

The primary reason, in my view, was simply to require that there actually be action taken by employers so that we know that there is an affirmative thing going on to screen every single person who is employed in this country to make sure. It seems to me that it is necessary to make some broad-sweeping changes in the manner in which we are conducting ourselves with regard to illegal aliens if we are going to begin to slow this process down.

I recognize that it is not the complete solution and, in fact, I recognize the paperwork burden. I think it comes back to that point I made a moment ago that it is the issue of what is the most important equity involved in this.

In the give and take of things, are we willing to give up something in the business community in terms of small business and I come from a small business background and can respect that and make the sacrifice for the broader and more completely dominating issue in front of us.

I would like to ask Mr. Thompson, is that not a consideration as well as a discrimination factor that we should be considering?

MR. THOMPSON. No question about it. I did not mean to imply that the paperwork burden is our only objection to the employer sanction section.

Our basic objection is exactly what you said and that is to put this burden on employers at all, we think, is the wrong way to go, especially small employers because small employers just don't have the facilities that this gentleman has with all his multiple plants.

Most small employers don't have employee relations directors or people who can interview hundreds of applicants and go through all these processes.

They just hire, like the Congressman who testified before us, as best they can. They go out and pick the fruit and get done with it. They don't have time to go through all this stuff.

They are trying to make a living to survive today.

MR. MCCOLLUM. But, Mr. Thompson, if we don't require them to keep the paperwork, then we only go after the willful violators, it is going to be extraordinarily difficult from the standpoint of administration to find the willful violators even if we hire a lot more people.

It is a lot easier for us to check the paperwork and that, of course, you are saying shifts the burden to the employer, but it may be a fundamental necessity to get the job done to do exactly that.

It may be a sacrifice employers will have to make in this country.

MR. THOMPSON. I think if you come up with a targeted approach either geographically or on known violators or suspected violators, you would have a much more effective program because you don't have the resources, I don't think, to check out every employer.

Mr. McCOLLUM. By the way, the INS has presented to us a preliminary suggestion for carrying us out and they do target the wisdom in a way.

Mr. Knicely, can you cite us an example of the "L" visa problem that you have seen confront organizations you represent?

Mr. KNICELY. Yes, sir. We had one just recently. We had a very, very senior executive located in a foreign country that we wanted to bring into the United States to run one of our businesses.

We had a lot of delay in trying to get that individual in here. He was running a very substantial piece of our business.

He had some very unique both technical and business knowledge of specific markets including foreign markets which we needed that expertise.

Mr. McCOLLUM. This is not an isolated once or twice a year proposition? Do you think it is pretty prevalent in the country?

Mr. KNICELY. I think it is very prevalent in business. It is the delay of getting that kind of expertise on an as-needed basis into the United States.

Mr. McCOLLUM. It is the same type of problem that you are related to with student waivers?

Mr. KNICELY. Yes, sir.

Mr. McCOLLUM. Thank you.

Mr. MAZZOLI. The gentleman from New York is recognized.

Mr. FISH. Thank you, Mr. Chairman.

Continuing on that vein. You pointed out in connection with your discussion of labor certification the current categories of job classifications are not always definitive enough to identify specific skills which are needed, particularly for emerging technologies.

Are you able to cite an example or two of a problem in connection with labor certification?

Mr. KNICELY. I think there are several examples. One in particular that I am quite familiar with, since we are a high technology company and we were looking for a specialist in thin coatings technology on high speed steel and we searched in the United States for that individual.

This location happened to be in one of our Southern States and we applied for labor certification and it took us 8 months to finally get that and we even conducted an additional search in the United States to try to find that individual.

We did find the person. He was an Indian and we were finally able to convince the Department of Labor that he had the technology that we were looking for.

Mr. FISH. Mr. Knicely, the subcommittee very much appreciates the support of the two major business organizations you represent.

During the last Congress it was my pleasure to work with you to formulate employer sanctions in such a way as not to unduly burden American business.

Now, you have suggested that we define that proposals of good faith be "confine requirements of the act to reviewing identification documents and producing and obtaining verification forms."

This is virtually the language in the committee report last year on page 39. But, as I understand, the definition would be making it absolute good faith whereas the committee report shows the inten-



tion of the committee was to establish a rebuttable presumption a which time the burden would shift to the Government.

That is the only difference between what is in the bill and what we propose. My question is, I guess, is would not your formulation protect the rare and unscrupulous employer who follows certain formalities knowing all along that the documentation he is checking is fraudulent?

Mr. KNICELY. Well, I suppose that is a possibility, Mr. Representative. We don't think that would be the rule.

It would certainly maybe be an exception, but our concern is to try to administer this as evenly and as fairly as we possibly can without placing an undue burden on that person at the small business level, the plant level who has to contend with this.

We don't think that that would be the case.

Mr. FISH. The only difference is that the committee bill would simply establish the burden of not being a businessman but the Government to rebut it.

Mr. KNICELY. I understand that distinction and we would feel more comfortable if we had that defined more clearly.

Mr. FISH. Chairman Rodino argued to the full committee last year that we should first address the illegal immigration and the attempt to perform legal immigration only after we observed the impact of our efforts to solve the legal immigration problem and the effects of immigration.

Mr. Bernsen, what is your response to the position that we can make more informed choices on the legal immigration provisions if we delay the decision for 2 years?

Mr. BERNSEN. I think that while we are devoting energy and giving attention to immigration reform, we should certainly also concentrate on our immigration system.

American business is being handicapped by not being able to bring in needed specialists and executives. By providing for a special category of independent immigrants with a separate numerical system and a formula for assuring that the most needed and most able people, and investors who bring economic benefit, get preference over the unskilled. I think that that is a very important step in the right direction and that if we don't act now, it may be years before we get another opportunity to make this change.

Mr. FISH. Your proposed language would explicitly recognize the right of an employer to resort to individual certification procedure if he believes that the specific job opportunity has special requirements not adequately accounted for in the national labor market formation.

Is there a compromise proposal that you would suggest that would permit individual determinations in some cases but not permit such individualized processes to be triggered merely by employers relief?

Mr. BERNSEN. Yes, sir. I think, as I say, that we need scheduling side by side with individual determinations. We need individual determination where the employer specifies specific job requirements that do not appear in the schedules.

In such a situation, the employer should be allowed to obtain an individual determination from the Labor Department.



Mr. FISH. Finally, Mr. Toohey, I just want your statement in the record.

Ambassador Asencio raised that question for us last week. The pilot we talked about last year, up from five countries to eight. A 2-year average as he indicated instead of 1 year with no higher than 2.5 percent in 1 of those 2 years with an average of 2-percent refusal rate and not counting either withdrawals or exclusions at the border.

Would you favor that?

Mr. TOOHEY. I think the travel industry would favor that, Congressman. It represents a liberalization in the law that the industry universally feels is far too restrictive and that seems to me to be reasonable, a two and a half percent refusal rate.

Mr. FISH. Does anybody have any further comment on that proposal?

[No response.]

Mr. MAZZOLI. Thank you very much.

Let me yield myself 5 minutes in case there are any questions my friends would have.

Mr. Toohey, the Consuls General met 2 months ago from throughout Europe. They were very supportive of doing something in the idea of this waiver. It did not surprise me, but at the same time they brought up some specifics.

It was not just simply to ease the work load. It was to do what they thought was appropriate.

Mr. Knicely, let me talk with you just a second. I think one of my colleagues brought up the good faith argument which you talked about in your statement and which, of course, we talk about in our bill, too, as constituting an affirmative defense.

The way we have it structured in our bill is that if the employer maintains the paperwork, that constitutes an affirmative defense. So if the INS comes in the employer says, "Look, this is it. I don't know whether the guy is who he says he is. He had the paper to show it and I have a defense."

It is then up to the Government to show that there was connivance or subterfuge before they can proceed.

We take into consideration the good faith action of the employer. One of the reasons we made it mandatory to check papers rather than optional, is to, in effect, protect employers. Basically, if they have that paperwork, they are protected.

If they could optionally not fill it out, then, of course, they take the chance when the INS does come in of not having any verification. That means that the INS maybe would make a case from that alone.

So, let me ask you on that basis, should the good faith constitute a total absolute defense that could not be gone into, looked behind by the INS?

How do you see the optional paperwork as against the mandatory paperwork requirement?

Mr. KNICELY. Well, of course, if we had a preference, we would not have any paperwork.

Mr. MAZZOLI. You would have an employer sanction without paperwork? Would that not make your people very vulnerable to some INS guy?

Mr. KNICELY. Based on the assumption you just mentioned, we would be vulnerable anyway.

Mr. MAZZOLI. In what way, if you maintain the paperwork either mandatorily or optionally? If he has an option to decide to keep the paperwork, does not that constitute a protection where without the paperwork you are not protected?

Mr. KNICELY. I think you have to have one or the other. Either you don't have the paperwork or you do. All we want to make sure is we know what good faith is and we understand that. We want to make sure that later on that we don't have the burden of going behind that paperwork and trying to verify it.

I understand the absolute defense point you are making.

Mr. MAZZOLI. You feel it should be an absolute defense; if the paper is there in the file, that is it?

Mr. KNICELY. Absolutely.

Mr. THOMPSON. I don't necessarily agree with that simply as a lawyer who has experienced some of these kinds of things. I think when you go that route you set up a perfect dodge for the willful violator.

Our basic principle is that we are trying to limit the scope of this thing as much as we can for two reasons. One is to minimize the paperwork and the other difficulties that it will prevent for employers of all sizes, and second, to focus the enforcement where we think it should be in the areas where there are likely to be violations.

I would have no problem and I think the organization I represent would have no problem with a system if you are going to have employer sanctions, and we prefer not to have them, of making the paperwork voluntary as a defense. It is available if you want to take advantage of it and not available if you don't.

If you take your chances, you take your chances. The reason I say that is I think that there are many, many parts of the country where this problem just simply does not exist.

I note that Senator Simpson does not agree with me on that, but I think there are many places in the country where the problem does not exist and you are putting a burden on employers that is totally unnecessary.

Mr. MAZZOLI. So you would make it optional for all categories of employer, large or small?

Mr. THOMPSON. Yes, sir. I think you should. I don't think there is any magic to the number 3. It seems you ought to apply it across the board. That is one way to do it.

The other way would be to go by geography and I think the answer to the question on your inviting discrimination is do enforce the laws against discrimination which we already have and you have some other protections built into this law which I think are highly desirable.

Mr. MAZZOLI. I would personally be very skeptical about regional or geographical targeting. But those who are mischievous and have shown bad behavior in the past is something we have to look into.

My time is expired, but, Mr. Brown, you seem to go into the same thing. The "L" visa is a problem to you the same as it is to Mr. Von Mehren and Mr. Bernsen and everybody. Your suggestion

is to let some of the companies through some mechanism preclear this paperwork for the INS. Is that what it amounts to?

Mr. BROWN. That is essentially correct.

Mr. MAZZOLI. If they have messed around with it and somehow it is found out, they no longer can do it that way?

Mr. BROWN. That is right.

Mr. MAZZOLI. Mr. Knicely, is that the kind of solution that you look to where some companies, because of their background record and the care with which they advance these applications, are given an opportunity to do their own paperwork?

Mr. KNICELY. We just need to expedite that. That is really what we are looking to do.

Mr. MAZZOLI. Whether you do it or not, it really should be expedited?

Mr. KNICELY. We think we can do it in a proper way and expedite it properly.

Mr. MAZZOLI. Thank you, gentlemen, very much. I yield.

Mr. LUNGREN. I just want to say that even though we may have some disagreements on the question of employer sanctions, it is my impression the chamber of commerce has done a far more intensive study of the subject than has an organization that we probably mutually belong to, along with the chairman, known as the American Bar Association. I attach far more weight to your comments than I do my own organization which in the waning moments and seconds of a general session meeting thrust through something without much through, without inviting the Attorney General for comments, without asking the chairman of the Senate committee to testify, without asking the chairman of this subcommittee or the ranking member to testify.

They somehow came up with the wisdom and notified all of us who pay dues that that is the judgment they made on our behalf. That doesn't carry a whole lot of weight. Your testimony and your organization does because I think you have made a good-faith effort to give us some thoughtful comments on this.

Mr. THOMPSON. Thank you, sir.

Mr. MAZZOLI. I endorse exactly what my friend said. I think the ABA did a very sloppy job, I think in connection with their vote on the ethics of lawyers and whether should they tell the public that the public is about to be ripped off, I think they had a zero for two session.

Mr. LUNGREN. I would like to address one question to Mr. Van Maren. What would be the consequences for agriculture in California if we did, indeed, pass sanctions on employers for knowingly hiring illegal aliens and yet made no effort in the bill to produce a workable guest worker H-2 program?

Mr. VAN MAREN. I think the other gentleman indicated that if a severe sanction program as provided under the proposed legislation, it is going to have a real adverse effect on employers. They are going to immediately look at every person who comes before them.

As indicated here earlier, it is not the intention of an employer to discriminate, but he is immediately going to discriminate in California because we do have a lot of Hispanics who do come in



for employment and not all of them are illegal aliens by any stretch of the imagination.

We have families of many longstanding generations in California of Hispanic origin and descent and I think they should not be discriminated against and it would have a very negative effect in that regard in particular.

Outside of that, I think farmers would probably be more hesitant. I am not sure how far they are going to go to seek out domestics, because that is not going to change anymore than where it is today.

We have a great deal of difficulty seeking out good, willing, able-bodied individuals who are willing to take to the fields and pick the crops and we need that type of talent.

It appears that we find that people of foreign descent seem to feel more comfortable under those conditions and we certainly appreciate and hope that strong consideration would be given to modification of the H-2 and including that and even the complementary program for special conditions under seasonal workers.

Mr. LUNGREN. We have had testimony in the last Congress. An estimate that perhaps 50 percent of the workers in the harvest for California and Arizona are here without benefit of proper documents and the figure given for the total work force was 300,000.

So you are talking about at least 50, some say maybe 60 to 70 percent. Coming from that part of the country, I know that most employers, or I believe most employers are scrupulous.

We have to recognize we have some unscrupulous employers who hire illegal aliens purely because they are illegal and take advantage of them.

That is human nature, but I am strongly convinced that the vast majority are not of that ilk. But because we have not had an effective immigration policy for years and because we have encouraged the labor force to move from Mexico to work on a seasonal basis, agriculture has become dependent along with some other industries.

So even though I am committed to employer sanctions, I hope we can come up with a bill that has an H-2 program or a guest-worker program that will actually be workable.

I don't think at the present time we are making an effort to clear up our problem and clean up our act on immigration. We should not jeopardize certain industries as to their continued viability. I hope that we can count on the efforts of your organization and other organizations for imaginative ideas on how we make an H-2 program or guest-worker program workable, so that as we legitimize workers in this country, we can also make sure that our employers are not left hanging by an abrupt change in a pattern of our laws that has existed since about 1880.

Mr. VAN MAREN. That is correct and I think in all fairness to employers, if they were required to test each employee, but when you are hiring anywhere from 300 to 600 employees at a crack, you are not going to have the time to go through each one as far as his national origin.

You have to hire him because you have a crop that is ready to be harvested. When he is through with that, he is going to move onto another crop. California is unique and it is a little different. It is

difficulty maybe sometimes for people to really understand its characteristics, but we certainly want to make sure that those employers have the employees because the consumer is the one who benefits in the end.

Mr. MAZZOLI. I would to follow up for a second.

It was last week I think that our colleague, Hank Brown of Colorado, which is a great agricultural State, said that one of the problems he saw in our bill was that if people go through a State employment service or a Federal/State employment service, and have the employees referred, the employer should feel that anyone referred to them by the State agency is allowed to work.

Do you see that as a help in this?

Mr. VAN MAREN. Let me respond this way. It has been brought to my attention and I have no facts on this, Mr. Mazzoli, but it has been brought to my attention that recently there has been major referrals by our Employment Development Department in California to agricultural employers and those employees, come to find out, were all pretty well knocked over by the Border Patrol as being illegal aliens.

So I think that we have to correct that problem perhaps first, but to be the sole referral, I think that may not be simple because things move very fast when crops start to ripen and it is essential that the employer, the farmer be able to move very quickly and very flexibly and not be tied down with the strain of Government and that is what we want to eliminate as much as possible, to eliminate Government out of the system.

Mr. THOMPSON. If you made the referral by some agency of the Government a good-faith defense optional, I would certainly encourage that.

Mr. MAZZOLI. That sounds like something that might be at least worth exploring. In other words, the idea being that the State agency would then have a responsibility of doing what we say should be done. That is they should not knowingly refer anybody who is undocumented. If you look to that organization to supply your needs, you can then rely upon those people who show up as being properly qualified to work. If it turns out that this group is not, then you are not responsible.

Mr. VAN MAREN. Are you looking at that as a sole source of employees or just as a source?

Mr. MAZZOLI. No. Hank didn't say it that way. It is just that they rely on it from time to time.

Mr. VAN MAREN. I would concur with that.

Mr. MAZZOLI. If you choose to take your own people directly, then you have got the responsibility. If either because of the way your industry lays out or you called some governmental referral agency, and they send you people, you do not have responsibility at that point to examine documents. If they happen not to be legally qualified to work upon some later investigation, then you are off the hook.

You have done everything you can by getting them through some governmental agency. It is at least one area that we intend to look into as some potential to simplify this whole process and still get to the bad actors.

The gentleman from Florida.



Mr. McCOLLUM. I would like to ask an agricultural question. I, being from Florida, have quite an interest in agriculture as well and a few days ago I had a long conversation with several growers in our area. Of course, they talked about a lot of things that we have been discussing for a long time, but one of three constructive suggestions they put forward that I had listened to before was in the area of problems they saw when they go to hire somebody to harvest a crop when they have a limited time in which to get the crop harvested, as you have expressed, and they ask for the documentation under our bill.

They said that a 1- or 2-day grace period when they are able to have this foreman, labor contractor or whoever, affirmatively show on the recordkeeping during this recordkeeping process that he did ask for documentation and that the person who is the perspective employee said I am rightfully here, but, gee, I left my birth certificate in the car or at home or my wife drove off with it or whatever. In this case it would be very helpful to the agricultural interests to have a 1- or 2-day grace period for them to go ahead and bring that person aboard and let him work that day while he is there with the understanding that he produce the document the next day.

Has that idea been battled around?

What do you think of whether it has or not?

Mr. VAN MAREN. In any session that I participated in, that issue has not been raised, but I would certainly concur because working with these type of employees, they are fine people, but sometimes I think they move from house to house, from area to area.

Perhaps having that type of documentation with them at the time of seeking that job, yes, sir, I would concur that a 2- or 3-day period would be most appropriate and very helpful because it would help to take that burden away from the employer.

Mr. McCOLLUM. How many prospective illegal employees do you think would be able to shirk our intent if we had a 1- or 2- or 3-day grace period by simply going to a different employer every day?

Mr. VAN MAREN. I guess I would have to answer you that I suspect they would be human.

Mr. McCOLLUM. So that would be something of a problem?

Mr. VAN MAREN. I think it would be.

Mr. McCOLLUM. I have one last question to any of you wishing to comment on it. I know that we have had a very serious debate the first time we went around this bill on the fact that we don't any longer have a practical investor category in our laws for legal immigrations.

That is, today we don't have a reality that people can come over and invest money because the numbers get eaten up with preference in other ways and we never get down to that category. Does the chamber support changes in the law to allow a real investor category?

In other words, bringing people over here as the original Simpson/Mazzoli effort was to do?

In other words, change the law so as a practical matter we can bring people over here as permanent resident aliens who would invest a certain amount of money in our country, perhaps higher than the current law, but nonetheless, they would at least have a chance in line?



Mr. THOMPSON. I don't think we have an official position on that subject. I will be glad to look into it and verify my statement and if I am wrong, I will correct it for the record.

Mr. McCOLLUM. Do any of the other gentlemen here either individually or representing your organizations have an opinion about whether we should provide in this bill or in future legislation for an investor category for people to be able to come over and become permanent residents if they provide a certain amount of capital and hire a certain number of employees that in previous years did occur, but in recent years has not occurred because of practical number considerations.

Mr. BERNSEN. The investor position has been traditionally in the immigration regulatory system. It was done by regulation rather than by law and it was used when nonpreference numbers were available.

Now, it is unlikely that nonpreference numbers would ever be available. I think we need a preference category for real investors, not the kind that we used to let in with only \$40,000.

Mr. MAZZOLI. Not the kind that come to Orlando, for example.

Mr. McCOLLUM. You want stonemasonry investors. That is what you want. We want citrus growers.

Mr. THOMPSON. For one thing, we ought to put stonemasons up there beside high technology because they are in very short supply.

Mr. MAZZOLI. I hate to scare my friend, but I think he could find a nuclear physicist quicker than he could a good stonemason.

Mr. McCOLLUM. If any of you gentlemen would carry that back to your organizations and perhaps feel the pulse, whether we have it in this bill or not, I think it is an issue that has not gone and it would be around and I believe I speak for all of us that we would like to know the views of the business community on this.

Mr. THOMPSON. We will definitely respond to you promptly on that.

Mr. MAZZOLI. One last thing while I have this captive audience. I cannot turn down the opportunity to build on what Bill or Dan said: That the nuclear physicist would probably charge less than the stonemason would.

Archie Bunker on Sunday night had a bathroom replacement put in his house. The plumber came in and was dressed up like you fellows are in three-piece suits, so Bunker said, "Hey, you are dressed like a banker." The plumber said, "A banker could not afford this suit."

So maybe we could not afford the stonemason, though we know he is an essential element.

Gentlemen, thank you very much.

Mr. MAZZOLI. We have from the Department of Health and Human Services, Mr. Anthony Pellechio, Deputy Assistant Secretary for Income Security Policy.

#### TESTIMONY OF ANTHONY J. PELLECHIO, DEPUTY ASSISTANT SECRETARY FOR INCOME SECURITY POLICY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Mr. MAZZOLI. Mr. Pellechio, you are welcome. If you have a statement, it will be made a part of the record.

Mr. PELLECHIO. I do have a statement.

Mr. MAZZOLI. I do not think we had the statement earlier. Is there some reason why you could not give it to us on time? Everybody else seemed to give us statements.

Mr. PELLECHIO. Excuse me.

Mr. MAZZOLI. Is there some reason why we did not have your statement early enough to look it over? Everybody else sent their statements in ahead of time.

Mr. PELLECHIO. We had the number of copies ready last evening and I presumed they went up this morning before the hearings got started.

Mr. MAZZOLI. I think the rule is 48 hours, Mr. Pellechio. We won't necessarily hold that against you, but I do think that it is very important to have it ahead of time to ask intelligent questions.

Mr. PELLECHIO. I understand. I apologize for its lateness. We had some delays in getting clearance and we were trying to be as careful as possible with the numbers cited in the papers in the last two pages.

Mr. MAZZOLI. Thank you. You may proceed.

Mr. PELLECHIO. For the record, let me correct your pronunciation of my name. It is Pellechio. I know that people have difficulty with Italian names.

Mr. MAZZOLI. With a name like Mazzoli, I should have some sympathy. Now, we have done our linguistics exercise for the day.

Mr. PELLECHIO. Mr. Chairman and members of the subcommittee, I am pleased to have the opportunity today to discuss H.R. 1510, the Immigration Reform and Control Act of 1983. We applaud the efforts of Chairman Mazzoli and the other members of the subcommittee in guiding this important legislation through the full Judiciary Committee and onto the House floor last year.

I am here today to talk about the provisions in the bill for public assistance benefits to newly legalized aliens. Under H.R. 1510, illegal aliens who have resided in the United States since January 1, 1977, would be eligible for permanent resident status and those who have resided in the United States since January 1, 1980, would be eligible for temporary resident status.

The Department of Health and Human services objects to the terms of legalization in the bill as they pertain to benefit eligibility. Total Federal costs for public assistance under the bill, not including education are estimated to be at least \$455 million in fiscal year 1984, \$979 million in fiscal year 1985, \$1.2 billion in fiscal year 1986 and \$1.3 billion in fiscal year 1987. Education assistance would total \$2.3 billion during these years. It is important to emphasize that these costs are not included in the President's budget for fiscal year 1984 or the future years.

We are particularly concerned about the budgetary impacts of the provisions in section 303 which authorize Federal reimbursement of 100 percent of certain State welfare costs for general assistance programs, the State share of medicaid, and SSI State supplements, subject to available appropriations. The provisions are too open-ended, do not allow for cost control at the Federal level and do not provide an incentive to States or localities to control costs.



The provisions in section 301 authorizing medical assistance when an alien requires such assistance "in the interest of public health or because of serious illness or injury" are ill-defined and could needlessly cost more than necessary to provide this assistance. Whereas we understand the intent of the subcommittee is to provide legalized aliens with needed medical assistance but not comprehensive medical coverage, we estimate that the cost of medical assistance for the legalized alien population would be as costly per capita as full medicaid coverage in a general population using the coverage criteria stated in the bill.

Furthermore, these medical assistance provisions would be extremely difficult to implement. It would be very burdensome for this Department and the States to set up and administer within the existing medicaid system a special new and separate program for legalized aliens consisting of a reduced benefit package and limited eligibility that is based upon severity of condition and public health interest. This limited eligibility is poorly defined in the bill.

Another provision that the administration opposes is section 302 of the House bill which updates the registry date so that illegal aliens who have been in the United States since January 1, 1973, could qualify for adjustment to regular permanent resident status. This provision would set up a second legalization system for some 175,000 to 300,000 illegal aliens who have lived in the United States since January 1, 1973. Unlike the aliens legalized under the legalization program, the aliens who adjust to permanent status under the registry program would be entitled to all regular Federal welfare programs immediately. The Department recommends against this two-tiered legalization system because of the increased welfare costs and the potential confusion that would result from a second standard of eligibility.

Overall, eligibility under the terms of H.R. 1510 for medicaid, SSI, AFDC, food stamps, disability insurance, and full State reimbursement of public assistance under H.R. 1510 would cost the Federal Government \$4 billion for fiscal years 1984-1987. This estimate includes costs associated with aliens given permanent resident status through extending the registry date. This estimate does not include the nonwelfare costs associated with H.R. 1510.

It would be very difficult to justify the inequity of providing costly welfare benefits to the legalized population when we are facing high unemployment and large budget deficits. There would be no incentive, under the House bill, for States to control health and welfare costs. We believe that access to full welfare entitlement programs would reward illegal entry unfairly, attract more illegal migration, and potentially, lead to unnecessary welfare dependency among aliens, most of whom now are employed and self-sufficient.

The administration prefers the public assistance provisions contained in the Senate's immigration reform bill, S. 529. Under S. 529, there are no provisions for direct Federal reimbursement of State and local public assistance costs. Instead, the bill authorizes a program of block grants to assist States and localities in providing essential medical care and other welfare services and assistance to the newly legalized aliens. We support a block grant at a total cost of about \$1.1 billion for fiscal years 1984-1987. Adding the costs of



disability insurance beginning in fiscal year 1984 and some entitlement programs for permanent resident aliens that begin in fiscal year 1987, we estimate that between fiscal year 1984 and fiscal year 1987, the total 4-year cost of the assistance package provided for under S. 529 would be \$1.6 billion. This would offset major costs for essential services that otherwise could fall on State and local areas as a result of legalization while encouraging States to control costs.

The block grant proposed in the Senate bill would provide maximum flexibility for States to determine priority needs in offsetting increased costs resulting from legalization while minimizing the problems of interpretation or administration under this time-limited program. Regulations and reporting requirements would be reduced to the minimum necessary to assure appropriate use of Federal funds.

The grant would permit States to allocate the resources between general assistance benefits, emergency medical care, and other services depending upon local circumstances such as local labor market conditions and the characteristics of the legalized aliens in the area. States, we believe, are in the best position to determine priority local needs and the block grants enable them to tailor their spending program to those needs. We believe the block grant approach provides the appropriate balance between Federal fiscal responsibility and sharing in the costs of aiding this population.

Thank you for this opportunity to address the subcommittee. I look forward to working with you on this important legislation and am prepared to answer any questions that you may have at this time.

[The complete statement follows:]

PREPARED STATEMENT OF ANTHONY J. PELLECHIO, DEPUTY ASSISTANT SECRETARY FOR  
INCOME SECURITY POLICY, DEPARTMENT OF HEALTH AND HUMAN SERVICES

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Public Assistance Benefits

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We are particularly concerned about the budgetary impacts of the provisions in section 303 which authorize Federal reim-

bursement of 100% of certain State welfare costs for general assistance programs, the State share of Medicaid, and SSI State supplements, subject to available appropriations. The provisions are too open-ended, do not allow for cost control at the Federal level and do not provide an incentive to States or localities to control costs.

The provisions in section 301 authorizing medical assistance when an alien requires such assistance "in the interest of public health or because of serious illness or injury" are ill-defined and could needlessly cost more than necessary to provide this assistance. Whereas we understand the intent of the Subcommittee is to provide legalized aliens with needed medical assistance but not comprehensive medical coverage, we estimate that the cost of medical assistance for the legalized alien population would be as costly per capita as full Medicaid coverage in a general population using the coverage criteria stated in the bill.

Furthermore, these medical assistance provisions would be extremely difficult to implement. It would be very burdensome for this Department and the States to set up and administer within the existing Medicaid system a special new and separate program for legalized aliens consisting of a reduced benefit package and limited eligibility that is based upon severity of condition and public health interest. This limited eligibility is poorly defined in the bill.



Another provision that the Administration opposes is section 302 of the House bill which updates the registry date so that illegal aliens who have been in the U.S. since 1/1/73 could qualify for adjustment to regular permanent resident status. This provision would set up a second legalization system for some 175,000 - 300,000 illegal aliens who have lived in the United States since 1/1/73, one for aliens in this country prior to 1973 and another for those here during the period from 1973 to 1980. Unlike the aliens legalized under the legalization program, the aliens who adjust to permanent status under the registry program would be entitled to all regular Federal welfare programs immediately (if they meet the normal eligibility standards of these programs). The Department recommends against this two-tiered legalization system because of the increased welfare costs and the potential confusion that would result from a second standard of eligibility.

Overall, eligibility under the terms of H.R. 1510 for Medicaid, SSI, AFDC, Food Stamps, Disability Insurance, and full State reimbursement of public assistance under H.R. 1510 would cost the Federal government \$4.0 billion for fiscal years 1984 - 1987. This estimate includes costs associated with aliens given permanent resident status through extending the registry date. This estimate does not include the non-welfare costs associated with H.R. 1510.

It would be very difficult to justify the inequity of providing costly welfare benefits to the legalized population when we are facing high unemployment and large budget deficits. There would be no incentive, under the House bill, for States to control health and welfare costs. We believe that access to full welfare entitlement programs would reward illegal entry unfairly, attract more illegal migration, and potentially, lead to unnecessary welfare dependency among aliens, most of whom now are employed and self-sufficient.

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services that otherwise could fall on State and local areas as a result of legalization while encouraging States to control costs.

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The grant would permit States to allocate the resources between general assistance benefits, emergency medical care, and other services depending upon local circumstances such as local labor market conditions and the characteristics of the legalized aliens in the area. States, we believe, are in the best position to determine priority local needs and the block grant enables them to tailor their spending program to those needs. We believe the block grant approach provides the appropriate balance between Federal fiscal responsibility and sharing in the costs of aiding this population.

Thank you for this opportunity to address the Subcommittee. I look forward to working with you on this important legislation and am prepared to answer any questions that you may have at this time.



## PROJECTED FEDERAL COSTS UNDER H.R. 1510

## THE HOUSE IMMIGRATION REFORM BILL

	1984	1985	1986	1987	1988	1989	1990	
AFDC	20.75	43.56	47.79	83.78	122.35	130.31	254.92	
FOOD STAMPS	26.04	59.24	72.63	118.83	167.77	183.54	343.03	
MEDICAID	201.28	419.38	429.90	425.77	408.73	409.09	341.91	
GENERAL ASSISTANCE	122.27	314.23	451.36	467.27	416.08	426.06	218.15	
SSI	23.46	62.26	91.96	108.40	111.68	116.70	112.36	
DISABILITY INSURANCE	61.26	80.43	106.37	139.70	177.45	225.05	279.61	84-87 88-90
TOTAL	455.05	979.11	1200.04	1343.76	1404.05	1490.76	1549.99	397B 444B



Mr. MAZZOLI. Thank you, Mr. Pellechio. Let me ask you, do you have any hard figures at your disposal to show how many or what percentage of the undocumented alien population is taking advantage of welfare programs they are not really entitled to take advantage of?

Mr. PELLECHIO. We assume in our cost-estimates that under the bill, 75 percent of the permanent resident aliens and 66 percent of the temporary resident aliens would take part in the legalization program.

From that point on we assume the same participation rates in the assistance programs that we assume for the general population.

Mr. MAZZOLI. So what is that participation rate? Are you aware that it was factored in by the analysts who put this together?

Mr. PELLECHIO. The participation rate in the illegal alien population is low because most aliens are working. They came here to work and they are working.

Mr. MAZZOLI. Maybe you can supply that material for us.

Mr. PELLECHIO. I am prepared to submit a detailed description of our assumptions that go into these cost-estimates and would be delighted to put them in the record.

Mr. MAZZOLI. We certainly would like to have those because we have had wildly differing figures on exactly what the bill would cost in the legalization section.

Mr. PELLECHIO. There were some changes between last year when we worked on the costs for H.R. 6514 and this year.

Mr. MAZZOLI. Different assumptions?

Mr. PELLECHIO. There are some changes in some of the base numbers because it is 1 year later and we have to reflect changes in average benefits due to the budget recommendations this year.

So we try to reflect changes in the population and in the federal budget as well as the 1-year update in the bill.

Mr. MAZZOLI. Now, one of the things again I would say lovingly is without having the statement earlier, it is hard for me to focus on it. How much will this program, of legalization cost?

Mr. PELLECHIO. The total is \$4 billion for fiscal year 1984 through 1987 in your bill.

Mr. MAZZOLI. That is what I am asking. In other words, how much do you gauge the legalization program in the bill before us would cost. Is that \$4 billion in fiscal year 1984 to 1987?

Mr. PELLECHIO. Yes, and that does not include education. Education would be another \$2.3 billion.

Mr. MAZZOLI. The \$4 billion is the HHS portion, welfare, medic-aid, SSI, disability, is that correct?

Mr. PELLECHIO. As well as the additional Federal reimbursement to the States. We also included food stamps in that as well.

Mr. MAZZOLI. We also have food stamps all in this \$4 billion.

Mr. PELLECHIO. That is right. Again, apologizing for the lateness of the arrival of the testimony, let me direct you to the second to the last page that breaks down these costs for these programs by fiscal year with totals for each year and two accumulated totals for 1984 to 1987 and 1988 to 1990.

Mr. MAZZOLI. From 1984 through 1987, those figures total \$4 billion, is that correct?

Mr. PELLECHIO. Well, you will see there it is \$3.987 billion.



Mr. MAZZOLI. And then from 1988 through 1990, you have another \$4.5 billion?

Mr. PELLECHIO. That is right.

Mr. MAZZOLI. And you say that you can supply the assumptions to us on which these estimates were made?

Mr. PELLECHIO. Yes. We have that laid out in great detail.

[The information follows:]

ASSUMPTIONS FOR ADMINISTRATION ESTIMATES OF  
WELFARE COSTS UNDER S.529 and H.R. 1510

A. THE LEGALIZATION PROGRAM

- (1) The Administration's estimates assume that there are now about 6.25 million illegal aliens in the United States. This was derived as follows: A 1980 Census staff study estimated that there were 3.5 million illegal aliens in 1978. Starting with a midpoint figure, we updated the estimate for subsequent growth of this population. We estimate that this population has grown since 1978 on the order of 250,000 per year. This growth, added to the 1978 estimate, raises the total illegal alien population to about 6.25 million in 1984.
- (2) The INS staff developed estimates for the Select Commission on Immigration and Refugee Policy of the length of continuous United States residence of the illegal alien population based upon several small sample illegal alien studies done in the late 1970s. INS's estimates were that 30 percent of all illegal aliens have been in this country continuously for four years or more. Using these estimates, we would conclude that if legalization occurs in early 1984 with a legalization cut-off date of 1/1/80, only 30 percent of the 6.25 million illegal aliens would be eligible. We have adjusted INS's original estimates upward and assumed that if legalization occurs in early 1984 with a legalization cut-off date of 1/1/80, 38 percent of the illegal aliens would be eligible (See Table 1). The Department assumes that the INS estimates were made a few years ago and that since then the prospect of U.S. amnesty and worldwide recession are likely to have led higher percentages of illegal aliens to choose to remain continuously in this country.
- (3) More specifically, we estimate that 5% of the illegal aliens entered before 1/1/73 and would be eligible for registrant status under H.R. 1510, 8% entered between 1/1/73 and 1/1/77 and would be eligible for permanent status while 25 % entered between 1/1/77 and 1/1/80 and would be eligible for temporary status (see Table 1).

This is a conservative estimate. It assumes that the great majority of illegal aliens have been in this country less than four years. If, in fact, a greater proportion have documents to establish continuous residency for four or more years, more legalized aliens will be eligible for legalization.

Table 1

Estimated Length of Continuous Residency  
of the Illegal Alien Population\*

<u>Year of Entry</u>	<u>Percent of Total Illegal Population</u>	<u>Maximum Eligible out of 6.25 Million</u>
1982	85	5.313
1981	70	4.375
1980	53	3.313
1979	38	2.375 (TRs)
1978	25	1.563
1977	18	1.125
1976	13	.813 (PRs)
1975	9	.563
1974	7	.438
1973	6	.375
1972	5	.313 (Registry under H.R. 1510)

- \* Table revised upward from estimates originally prepared by INS for the Select Commission on Immigration and Refugee Policy. The earlier INS estimates were developed based on small sample surveys of the illegal alien population. Since then, the prospect of U.S. amnesty and world-wide recession are likely to have caused higher percentages of recently arriving aliens to remain continuously in the United States.



Derivation of Legalized Alien Population Totals

	<u>% of 6.25 Million Illegal Aliens Eligible</u>	<u>Estimated Number</u>	<u>% Participating in Legalization</u>	<u>Estimated Number</u>	<u>% Additional U.S. Born Children</u>	<u>Total Legalized Alien Population With All Their Children</u>
Early PRS entered before 1/1/73 (registrants under H.R. 1510)	5%	312,500	80%	250,000	+13%	282,500
PRS entered between 1/1/73 and 1/1/77	8%	500,000	75%	375,000	+13%	423,700
TRS entered between 1/1/77 and 1/1/80	25%	1,562,500	66.67%	1,041,700	+13%	1,177,000
Total	38%	2,375,000	70.18%	1,666,700	+13%	1,883,200

- (4) INS staff estimate that 3/4 of the aliens eligible for permanent status and 2/3 of the aliens eligible for temporary status will participate. Our cost estimates use these same rates except that we have estimated that the earliest cohort -- those who have resided continuously in this country since 1/1/73 (the registry population under H.R. 1510) would participate in legalization at 80 percent. These participation rates are higher than the participation rates reported by other countries recently granting amnesty to aliens because we anticipate that broadly based ethnic community groups will be able to promote and assist with legalization effectively. Furthermore, unlike other countries, this legalization program will be accompanied by a new enforcement effort -- the employer sanctions program.

#### B. DEMOGRAPHIC CHARACTERISTICS

- (1) Age and family composition -- A recent Census staff study of characteristics of illegal aliens estimated that about 27 percent of that population are children 18 and under. This data did not include additional children born in the United States to illegal alien parents. We assume that the U.S. born children add 13 percent to the total population. This assumes that for every two foreign-born illegal children, there is one additional child born in the U.S. The estimate assumes that the American-born children, who are legal U.S. citizens, are not getting the welfare benefits to which they are entitled because the parents who are illegal do not want to come forward. The estimates also assume that these legal children are not counted in total illegal alien population figures.
- (2) Based upon small sample surveys of illegal aliens, we have assumed that on the average an illegal alien family has two children. In our estimates we assume that half of the families have female heads and the rest are two-parent families.

#### C. ASSUMPTIONS FOR WELFARE USE

- (1) Based on studies of illegal aliens, we assume that generally they are a younger population than the U.S. population. Many are employed in marginal occupations and incomes tend to be low.

- (2) Illegal aliens currently are ineligible for Federal welfare programs and rates of unauthorized welfare use reportedly are low. The Administration assumes that most illegal aliens are employed now, but anticipates that after legalization, some aliens who are employed now, particularly in marginal level jobs, will not be able to retain their jobs. As the aliens become eligible for public assistance programs, the rate at which they participate initially will be lower than the total U.S. population and, after three years, the rates will build up to a comparable level. We have assumed that as the population assimilates, it will behave more like the total U.S. population as far as welfare use is concerned, leading to similar rates of dependency controlling for age and income characteristics. The specifics are discussed in the sections on each program below.
- (3) If the bill becomes law late in 1983, we assume that six months of FY 1984 benefits will be available to those who are legalized. The three and six year durations of program eligibility mentioned above also assume mid-year starting and end points.
- (4) Average per capita benefit levels in each program for FY 1984 and the rate of growth in the outyears conform with the Administration's new budget policies. These are shown on the projected cost tables for each program.

#### D. ASSUMPTIONS FOR AFDC

- (1) We estimate that under H.R. 1510, the cost of AFDC benefits for legalized aliens in FY 1984, FY 1985, FY 1986 and FY 1987 will be \$20.75 million, \$43.56 million, \$47.79 million, and \$83.78 million respectively (see Table 3.) Under S. 529, the total AFDC costs over these same years will be \$0, \$0, \$0, and \$31.69 million (see Table 4).
- (2) Under both H.R. 1510 and S. 529, permanent residents would be excluded for three years and temporary residents would be excluded for six years from AFDC. By 1987, those who became permanent residents when they were granted amnesty would be eligible for AFDC benefits. By 1989, those who became temporary residents when they were granted amnesty would be eligible for these benefits.



TABLE 3

House Bill H.R. 1510  
Projected AFDC Costs

Permanents = 95,000    Registrants = 63,000    Temporaries = 263,000

Individual Cost by Year

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
\$ 750	\$ 760	\$ 780	\$ 800	\$ 820	\$ 840	\$ 860

Costs (Millions)

Permanents	0.00	0.00	0.00	33.21	70.50	77.21	81.56
Registrants	20.75	43.56	47.97	50.58	51.84	53.11	54.37
Temporaries	0.00	0.00	0.00	0.00	0.00	0.00	118.99
TOTAL BY YEAR:	20.75	43.56	47.79	83.78	122.35	130.31	254.92

TABLE 4

Senate Bill S. 529  
Projected AFDC Costs

Permanents = 158,000

Temporaries = 263,000

Individual Cost by Year

1987	1988	1989	1990
<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
\$ 800	\$ 820	\$ 840	\$ 860

Costs (millions):

Permanents	31.69	81.13	116.21	136.03
Temporaries	0.00	0.00	0.00	56.69

Total by Year:	31.69	81.13	116.21	192.72
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- (3) Under H.R. 1510, aliens who entered before 1/1/73 and adjust to regular permanent resident status under the registry program would be entitled to receive benefits under all regular Federal entitlement programs, including AFDC, beginning in FY 1984 if they meet the normal eligibility criteria of these programs.
- (4) The Administration's estimates are based on assumptions about the proportion of aliens in families with children and the unemployment levels of the population after legalization. We assume that 23 percent of all children will be eligible to receive AFDC. (In the total population, 13 percent of all children receive AFDC. We have assumed that once the legalized population reaches their full level of participation, the dependency rate will be higher because of the lower socioeconomic status of this population compared to the total population.) Some 90 percent of the families receiving AFDC will be female-headed families.
- (5) We have assumed that 78 percent of the legalized alien AFDC units will be single parent units containing an average of three people and 22 percent of the AFDC assistance units will be two-parent units (in States with AFDC unemployed parents programs) and containing an average of four people.
- (6) After a phase-in period of three years, 87 percent of the population that is eligible for AFDC and 40 percent of the population that is eligible for AFDC-UP will participate in the program (equal to the current rates in the total population). Participation in AFDC is assumed to build up at annual rates which are 50 percent, 75 percent, and 100 percent of the full AFDC participation rates noted above.
- (7) Annual per individual costs are based on the projected per individual costs of the total population.

#### E. ASSUMPTIONS FOR SSI

- (1) Under H.R. 1510, the estimated cost of SSI benefits for legalized aliens will be \$23.46 million in FY 1984, \$62.26 million in FY 1985, \$91.96 million in FY 1986 and \$108.40 million in FY 1987 (see Table 5). Under S. 529, there will be no costs for SSI in FY 1984 through FY 1986. The cost in FY 1987 will be \$7.43 million (see Table 6).



TABLE 5

House Bill H.R. 1510  
Projected Supplemental Security Income Costs

Permanents = 6,500      Registrants = 4,500      Temporaries = 19,000

Individual Cost by Year

1984	1985	1986	1987	1988	1989	1990
\$2,230	\$2,370	\$2,500	\$2,640	\$2,780	\$2,910	\$3,040

Costs (millions):

Permanents	3.77	10.02	14.80	17.85	18.82	19.67	20.55
Registrants	2.52	6.68	9.87	11.90	12.55	13.11	13.70
Temporaries	12.58	33.40	49.34	59.49	62.74	65.56	68.51
Total by Year	18.88	50.10	74.00	89.24	94.11	98.34	102.77

Federally Reimbursed State Supplement

Costs (millions):

Permanents	1.06	2.81	4.14	2.50	0.00	0.00	0.00
Temporaries	3.52	9.35	13.81	16.66	17.57	18.36	9.59
Total by Year:	4.52	12.16	17.96	19.16	17.57	18.36	9.59

GRAND TOTAL

<u>BY YEAR:</u>	23.46	62.26	91.96	108.40	111.68	116.68	112.36
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TABLE 6

Senate Bill S. 529  
Projected SSI Costs

Permanents = 11,000	Temporaries = 19,000			
	Individual Costs by Year			
	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
	\$2,640	\$2,780	\$2,910	\$3,040
<u>Costs (millions):</u>				
Permanents	7.43	19.59	28.69	34.24
Temporaries	0.00	0.00	0.00	14.27
TOTAL	7.43	19.59	28.69	48.52

- (2) Under H.R. 1510, permanent residents would be excluded for three years and temporary residents would be excluded for six years from Federal public assistance programs unless it is determined that they require assistance "because of age, blindness or disability." The Department believes that under this language, all aged or disabled legalized aliens who meet the eligibility requirements for SSI would be eligible for SSI beginning in FY 1984.
- (3) Under S. 529, we assume that permanent residents would become eligible for SSI beginning in FY 1987 and temporary residents who become permanent residents would become eligible for SSI beginning in FY 1990.
- (4) We assume an SSI reciprocity rate of 1.6 percent for aged and disabled combined. The rate assumes that 2.3 percent of the population is elderly and 1 percent is blind or disabled. (Since a recent Census staff study shows that illegal aliens are younger on average than the total United States population, the overall percentage of blind, disabled and elderly is smaller.) It is assumed that 75 percent in both groups will be eligible for SSI and, after a three year phase-in period, 65 percent would participate. This is the current participation rate for the total population. The phase-in rates are estimated to be 50%, 75% and 100% of the full 65% participation rate.
- (5) Under H.R. 1510, the Administration assumes that the Federal government will be responsible for reimbursing States for costs of providing SSI State supplements to legalized aliens. Whereas States normally pay these costs, in the case of legalized aliens, the Federal government is assumed to be responsible for reimbursing States for three years in the case of permanent residents and for six years in the case of temporary residents. We have assumed that the cost of State supplements will be 28 percent of the cost of the Federal SSI program -- the percentage is based on current SSI costs nationally.
- (6) The House bill's State reimbursement provision does not apply to aliens legalized under the registry program. Thus there are no registrant costs under SSI State supplements.



- (7) Under S. 529, there are no provisions for direct Federal reimbursement of State and local public assistance costs. The Federal government will be responsible only for the Federal share of SSI.
- (8) The annual per recipient costs reflect costs for aged and disabled combined and are the same as the program's currently projected per individual costs for the total U.S. population.

F. ASSUMPTIONS FOR MEDICAID

- (1) The projected costs of Medicaid for legalized aliens under H.R. 1510 is \$201.28 million in FY 1984, \$419.38 million in FY 1985, \$429.90 million in FY 1986, and \$425.77 million in FY 1987 (see Table 7). Medicaid costs under S. 529 would be \$0, \$0, \$0, and \$38.34 million (see Table 8).
- (2) Under the Senate bill, permanent residents would be excluded for three years and temporary residents who become permanent residents would be excluded for six years from Medicaid.
- (3) The House bill would exclude legalized aliens from Federal medical assistance programs for the same time periods unless such assistance is required "in the interest of public health" or because of "serious illness or injury." Under this language the precise extent of medical assistance coverage for aliens is unclear. We have assumed that aliens who a) are eligible for SSI, b) are eligible for AFDC, or c) would have been eligible for AFDC, but are excluded from such benefits by the bill, would be eligible for medical assistance under Medicaid beginning in FY 1984. We have assumed that populations normally ineligible for Medicaid, e.g., singles and childless couples, would not be eligible for medical assistance under the bill. If coverage were extended to these populations, costs would be much higher.
- (4) We assume initially rates of Medicaid use by eligible legalized aliens will be lower than in the general population. Compared to AFDC or SSI, however, we have assumed that legalized aliens will increase their use of Medicaid more rapidly to a level comparable to the general U.S. population's use of this program. This is because medical conditions will bring legalized aliens into health facilities for treatment regardless of whether or not they are

TABLE 7  
House Bill H.R. 1510  
Projected Medicaid Costs  
Federal Share

Individual Cost by Year							
	1984	1985	1986	1987	1988	1989	1990
Adult	\$ 551	\$ 560	\$ 560	\$ 570	\$ 580	\$ 580	\$ 590
Child	267	270	270	280	280	280	280
Aged/Disabled	847	860	870	870	890	890	900
PERMANENTS & REGISTRANTS	Adult = 63,000    Child = 136,000    A/D = 15,000						
Costs (millions)							
Adults	16.03	33.24	34.56	35.85	36.48	36.48	37.11
Children	16.75	34.69	36.34	37.98	37.98	37.98	38.52
Aged/Disabled	6.03	12.46	13.12	13.45	13.63	13.71	13.88
Total	38.80	80.38	84.01	87.27	88.09	88.16	89.50
TEMPORARIES	Adult = 105,000    Child = 227,000    A/D = 26,000						
Costs (Millions)							
Adults	32.06	66.48	69.12	71.70	72.96	72.96	74.21
Children	33.50	69.38	72.67	75.96	75.96	75.96	77.05
Aged/Disabled	12.05	24.91	26.24	26.89	27.26	27.41	27.75
Total	77.61	160.78	168.03	174.55	176.18	176.33	179.02
Total by Year:	116.41	241.16	252.04	261.82	264.27	264.50	268.52
<u>Federally Reimbursed State Share</u>							
PERMANENTS							
Costs (Millions)							
Adults	7.64	15.85	16.48	8.55	0.00	0.00	0.00
Children	7.99	16.55	17.33	9.06	0.00	0.00	0.00
Aged/Disabled	2.87	5.94	6.26	3.21	0.00	0.00	0.00
Total	18.51	38.34	40.07	20.81	0.00	0.00	0.00
TEMPORARIES							
Costs (Millions)							
Adults	27.41	57.84	56.68	58.79	59.82	59.82	30.43
Children	28.64	60.36	59.59	62.29	62.29	62.29	31.59
Aged/Disabled	10.31	21.68	21.51	22.05	22.35	22.48	11.38
Total	66.36	139.88	137.79	143.13	144.47	144.59	73.40
Total by Year:	84.87	178.22	177.86	163.95	144.47	144.59	73.40
<u>FED SHARE &amp;</u>							
<u>FED. REIMB.</u>							
<u>STATE SHARE</u>							
<u>GRAND TOTAL</u>	201.28	419.38	429.90	425.77	408.73	409.09	341.91

TABLE 8

Senate Bill S. 529  
Projected Medicaid Costs

	Individual Cost by Year			
	1987	1988	1989	1990
Adult	\$ 570	\$ 580	\$ 580	\$ 590
Child	280	280	280	290
Aged/Disabled	900	910	920	930
PERMANENTS      Adult = 63,000      Child = 136,000      A/D = 15,000				
<u>Costs:</u>				
Adults	16.04	34.16	35.75	36.92
Aged/Disabled	4.70	9.82	10.24	10.51
Children	17.55	35.66	37.61	39.97
Total	38.34	79.63	83.60	87.41
TEMPORARIES      Adult = 105,000      Child = 227,000      A/D = 26,000				
<u>Costs:</u>				
Adults	0.00	0.00	0.00	26.83
Aged/Disabled	0.00	0.00	0.00	8.09
Children	0.00	0.00	0.00	29.27
Total	0.00	0.00	0.00	64.18
GRAND TOTAL	38.34	79.63	83.60	151.59



covered under Medicaid. Typically, however, a determination will be made by the facility whether or not the patient is eligible for Medicaid benefits and, if the alien is eligible, he will be enrolled in the program. The phase-in rates are assumed to be 92 percent, 96 percent, and 100 percent of the participation rate (87% for AFDC families, 40% for AFDC-UP families, and 65% for SSI recipients).

- (5) The Administration has developed its estimates based upon benefit levels equal to the average annual Medicaid benefit levels of the total population excluding long-term care. Our rationale for using the full benefit level is that whereas the precise extent of medical assistance coverage is unclear under the House bill, we have assumed, pending further guidance from the Committee, that hospitalization and related ancillary services, physician visits, prenatal care, immunizations, and medication all go toward conditions that are serious or in the interest of public health and thus would be reimbursed by the medical assistance program for legalized aliens. Excluding long-term care, over 90 percent of Medicaid costs currently are for services that would meet the aliens' criteria for reimbursement. Since we know little about the population's health status, but believe that it may be worse than that of the general Medicaid population, we have developed our estimates based on full Medicaid costs (excluding long-term care). If relative to the current Medicaid population, aliens are in less need of medical care, costs would be lower.
- (6) We have assumed that residents who are medically needy could receive benefits and the ratio of categorically needy to medically needy is equal to the United States average.
- (7) Based on the assumptions noted above, we estimate that at full participation, 25% of the legalized alien population would be eligible for Medicaid and medically needy programs. Nearly 10% of the total U.S. population currently is eligible for Medicaid. Because of their lower average income level, we assume there will be a higher rate of Medicaid eligibility among legalized aliens.
- (8) Under the House bill, we have assumed that for the first three years in the case of permanents and for the first six years in the case of temporaries, the Federal government also would be responsible for the State and local share of Medicaid and medically needy programs.

#### G. ASSUMPTIONS FOR FOOD STAMPS

- (1) Under the House bill, total costs for food stamps will be \$26.04 million in FY 1984, \$59.24 million in FY 1985, \$72.65 million in FY 1986, and \$118.83 million in FY 1987 (see Table 9). Under the Senate bill, there will be no food stamp costs for FY 1984 through FY 1986. The total cost in FY 1987 will be \$37.71 million (see Table 10).
- (2) We have assumed that under S. 529, permanent residents will not be eligible for food stamp benefits until FY 1987 and temporary residents who become permanent residents will not be eligible for food stamp benefits until FY 1990.
- (3) Under H.R. 1510, aged and disabled aliens will be eligible not only for SSI, but also for food stamps beginning in FY 1984. Registrants also will be eligible for food stamps beginning in FY 1984. Non-aged and disabled permanent residents will begin receiving food stamp benefits in FY 1987. At full participation, about 32 percent of the legalized aliens are expected to participate in the program. The estimates were developed using an AFDC and SSI program base, e.g., based upon the current ratio in the total U.S. population of persons on AFDC and SSI to persons on food stamps. Phase in rates and participation rates are the same as in AFDC and SSI.
- (4) The annual food stamp benefit levels are the same as the projected annual benefit levels for the total population.

#### H. ASSUMPTIONS FOR GENERAL ASSISTANCE

- (1) The estimated cost of reimbursing State and local government for GA benefits to families, single persons and couples under the House bill would be \$122.27 million in FY 1984, \$314.23 million in FY 1985, \$451.36 million in FY 1986, and \$467.27 million in FY 1987 (see Table 11).
- (2) Under H.R. 1510, the Federal government would fully reimburse State and local areas for the cost of public assistance benefits which are paid to legalized aliens if such benefits are generally available to other needy persons in the area and if those benefits receive State or local funding. Primarily, these benefits are paid through State and locally administered general assistance (GA) programs for indigent populations not eligible for AFDC or SSI.

TABLE 9

House Bill H.R. 1510  
Projected Food Stamp Costs

Non-Aged/Disabled Permanents = 143,000	Non-Aged/Disabled Permanents = 8,000
Non-Aged/Disabled Registrants = 96,000	Non-Aged/Disabled Registrants = 6,000
Non-Aged/Disabled Temporaries = 399,000	Non-Aged/Disabled Temporaries = 23,000

Individual Cost by Year

	1984	1985	1986	1987	1988	1989	1990
	\$ 503	\$ 529	\$ 565	\$ 596	\$ 630	\$ 666	\$ 703
 NON-AGED							
Costs (millions)							
Permanents	0.00	0.00	0.00	37.14	81.47	92.38	100.84
Registrants	20.85	45.59	52.24	57.04	60.26	63.66	67.23
Temporaries	0.00	0.00	0.00	0.00	0.00	0.00	145.92
Total by Year	20.85	45.59	52.24	94.19	141.73	156.04	313.99
 AGED/DISABLED							
Costs (Millions)							
Permanents	1.04	2.73	4.08	4.93	5.21	5.50	5.81
Registrants	0.69	1.82	2.72	3.29	3.47	3.67	3.87
Temporaries	3.46	9.10	13.61	16.43	17.36	18.33	19.36
Total	5.19	13.66	20.41	24.64	26.03	27.50	29.04
Total by Year:	26.04	59.24	72.65	118.83	167.77	183.54	343.03



TABLE 10

Senate Bill S. 529  
Projected Food Stamp Costs

Permanents = 253,000

Temporaries = 422,000

Individual Costs by Year

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
	\$ 596	\$ 630	\$ 666	\$ 703
<u>Costs (Millions)</u>				
Permanents	37.71	99.63	147.25	177.77
Temporaries	0.00	0.00	0.00	74.09
TOTAL	37.71	99.63	147.25	251.86

TABLE 11

House Bill H.R. 1510  
Projected General Assistance Costs  
Federal Share

Singles Type Permanents = 4,000      Singles Type Permanents = 13,000  
 Couples Type Permanents = 1,000      Couples Type Permanents = 3,000  
 AFDC Type Permanents = 73,000      AFDC Type Permanents = 244,000

Individual Cost by Year

	1984	1985	1986	1987	1988	1989	1990
Singles	\$2,634	\$2,710	\$2,780	\$2,840	\$2,910	\$2,980	\$3,050
Couples	1,980	2,030	2,080	2,130	2,180	2,240	2,290
AFDC Type	1,380	1,420	1,460	1,490	1,530	1,560	1,600

SINGLES

Costs (millions)

Permanents	2.51	6.45	9.27	5.42	0.00	0.00	0.00
Temporaries	8.37	21.52	30.90	36.17	37.03	37.92	19.42

Total	10.88	27.97	40.17	41.59	37.03	37.92	19.42
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COUPLES

Costs (Millions)

Permanents	0.42	1.08	1.55	0.90	0.00	0.00	0.00
Temporaries	1.40	3.59	5.15	6.03	6.17	6.32	3.24

Total by Year:	1.81	4.66	6.70	6.93	6.17	6.32	3.24
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AFDC-TYPE

Costs (Millions)

Permanents	25.28	64.98	93.34	54.62	0.00	0.00	0.00
Temporaries	84.29	216.62	311.15	364.13	372.87	381.82	195.49

Total	109.57	281.60	404.49	418.75	372.87	381.82	195.49
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Total by Year:	122.27	314.23	451.36	467.27	416.08	426.06	218.15
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- (3) There are no provisions for direct Federal reimbursement of State and local public assistance costs under the Senate bill, S. 529.
- (4) Based upon estimates of illegal alien unemployment and family composition after legalization, the Department estimates that 7 percent of aliens qualify for State and local general assistance programs for persons without children. We assumed that 22% of single individuals (the estimated current rate of unemployment among Hispanic males 17- 35 years of age) will be unemployed. Seventy-five percent of these will be living in GA benefit States and eligible for GA benefits. In order for childless couples to qualify, however, both adults would have to be unemployed. We have assumed that the joint probability that both adults would be unemployed is 4.6%. For both single and childless couples, we have assumed that full participation will be 40% and it will take 3 years to phase-in to this level.
- (5) Under the bill, mothers with dependent children and other aliens normally eligible for AFDC would be excluded from the program because of their recently legalized status. In the absence of any action by States or local areas to specifically exclude mothers with dependent children from GA benefits while GA benefits are provided to single individuals, couples without children, etc., some if not all States and localities with GA programs would provide benefits to families normally eligible for AFDC. The duration of full Federal reimbursement of GA assistance would be three years in the case of permanent residents and six years in the case of temporary residents who later become permanent residents.
- (5) The provisions for direct Federal reimbursement of State and local public assistance costs does not apply in the case of registrants. Their adjustment to regular permanent resident status is not part of this legalization program.
- (6) In estimating the costs of extending GA coverage to AFDC-type families, we have assumed that GA eligibility, participation rates, and benefit levels will be the same as for the AFDC program. This only covers non-medical benefits since we have assumed that the major medical problems of this population would be covered through Medicaid.



- (7) For single individuals, GA costs are based on the refugee program's estimates of GA cash and medical benefits combined. (The amount is similar to our latest national GA program cost data which is three years out of date.) The total cost of benefits for a two-person unit is assumed to be 1.5 times the total cost for a unit consisting of a single person.
- (8) GA benefits for families, single individuals or childless couples would only be available if there were an existing local GA program. We have assumed that a quarter of the legalized aliens reside in States or localities that have no GA programs and would receive no such benefits.

#### I. ASSUMPTIONS FOR DISABILITY INSURANCE ESTIMATES

- (1) The table below gives estimates for 1984-1990 of the average number of persons from the legalized alien group who would be receiving disability benefits under the OASDI program and projected expenditures (rounded to the nearest 5 million dollars) for disability benefits paid to these persons and their families. Disability Insurance is not a welfare program and at no time will legalized aliens be excluded from this program under either the House or Senate bill.

Table 12  
Disability Insurance Benefits for Legalized Aliens

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1988</u>	<u>1990</u>
Average Number of Disabled Beneficiaries	8,300	10,500	13,100	16,200	19,700	23,500	27,300
Disability Benefits Paid (in millions)	\$60	\$75	\$100	\$130	\$165	\$210	\$250

- (2) By using available information on age distribution and years of residency of the legalized aliens, we estimated the portion of each age group in the active work years (18-64) that satisfied insured status requirements. We assumed that these groups of eligible persons would experience disability

at the same rate as the normal U.S. population (based upon the 1979 OASDI Trustees Report data for the U.S. male population). We also assumed that those persons who were eligible for OASDI benefits and became disabled prior to 1/1/84 would be counted as part of the 1/1/84 disabled population, and we assumed that three percent of those disabled at the beginning of a year would die by the end of that year. Finally, we assumed that the average family benefit was \$7000 per year in 1984 -- which is comparable to the current average family benefit for the general population -- and thereafter would increase by 5 percent a year.

J. ASSUMPTIONS FOR THE BLOCK GRANT

- (1) Under S. 529, States will receive block grant funds to provide a program of limited assistance for legalized aliens not eligible for regular welfare programs to meet essential medical and subsistence needs. The Administration has established a ceiling of \$1.1 billion for this block grant over the four year period of FY 1984 to FY 1987. We have assumed that the \$1.1 billion in block grant funds will be divided by year based on the estimated number of legalized aliens who are excluded from regular Federal income security and health programs under the bill.
- (2) Under the bill, block grant funds for legalized aliens are authorized through FY 1990. We assume that the payouts for FY 1988 through FY 1990 will be at the same rates as in the earlier years.

TABLE 13

Block Grant Allocations by Year  
(millions of dollars)

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
165	330	330	275	220	220	110

K. SUMMARY

- (1) Chart A and B summarize the Administration's assumptions about the duration of program eligibility under H.R. 1510 and S. 529. While no legalized aliens are eligible for AFDC, Medicaid, SSI or food stamps until FY 1987 under the Senate bill, portions of the legalized alien population start being eligible for these programs beginning in FY 1984 under the House bill.

## PROGRAM ELIGIBILITY UNDER H.R. 1510

417

AFDC

Medicaid  
(Minus Long Term Care)

SSI

Food Stamps

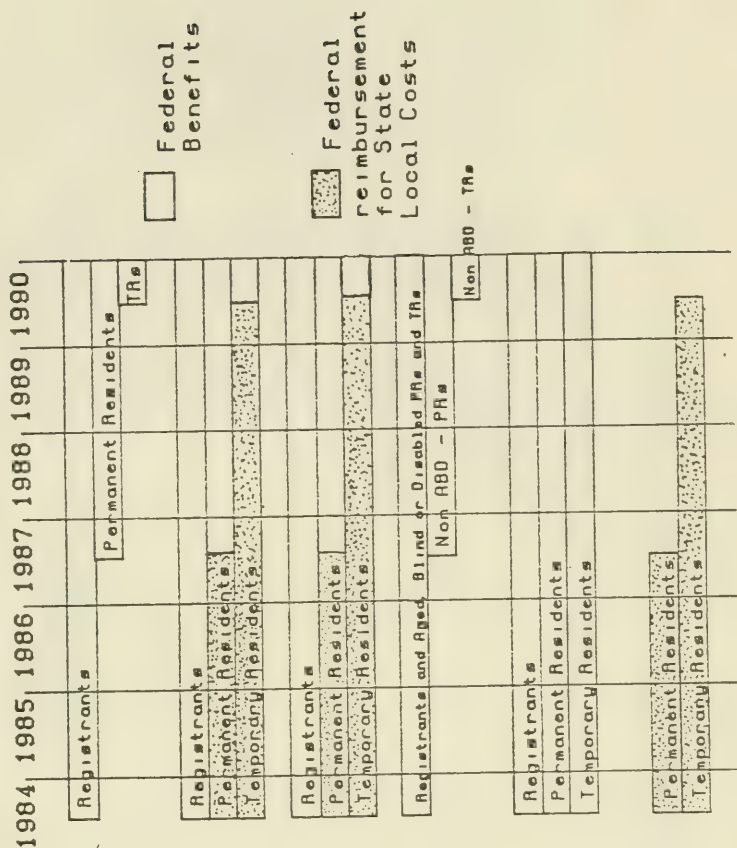
Disability  
InsuranceGeneral  
Assistance



CHART B

## PROGRAM ELIGIBILITY UNDER S. 529

	1984	1985	1986	1987	1988	1989	1990
AFDC				Permanent Residents TRs	Permanent Residents	Permanent Residents	Permanent Residents TRs
Medicaid					Permanent Residents TRs	Permanent Residents	Permanent Residents TRs
SSI					Permanent Residents TRs	Permanent Residents	Permanent Residents TRs
Food Stamps					Permanent Residents TRs	Permanent Residents	Permanent Residents TRs
Disability Insurance				Permanent Residents Temporary Residents	Permanent Residents Temporary Residents		
Block Grant				Permanent Residents Temporary Residents	Permanent Residents Temporary Residents		

Federal  
Benefits

- (2) Under the Senate bill permanent aliens are just beginning to become eligible for these programs in FY 1987 and participation rates will be lower than in the total population. Under the House bill, since portions of the legalized alien population will already have participated in the welfare programs for 3 years, their rates of participation will be comparable to the rates of the total U.S. population.
- (3) We have assumed that the House bill's provisions for 100% reimbursement of State and local public assistance programs require not only Federal reimbursement of GA benefits, but also Federal reimbursement of the States' share of Medicaid and SSI State supplements.
- (4) We project that the total cost of benefits for legalized aliens between FY 1984 and FY 1987 will be \$3.955 billion under H.R. 1510 and \$1.580 billion under S. 529 (see Tables 14 and 15).

TABLE 14

PROJECTED FEDERAL COSTS UNDER H.R. 1510  
THE HOUSE IMMIGRATION REFORM BILL

	1984	1985	1986	1987	1988	1989	1990
AFDC STAMPS	20.75	41.56	47.79	83.78	122.35	170.31	254.92
FOOD STAMPS	26.04	59.24	72.65	118.83	167.77	183.54	341.03
MEDICAID	201.28	419.38	429.90	473.77	408.73	409.09	341.91
GENERAL ASSISTANCE	122.27	314.23	451.36	467.27	416.08	426.06	218.15
SSI	23.46	62.26	91.96	108.40	111.68	116.70	112.36
DISABILITY INSURANCE	60.00	75.00	100.00	130.00	165.00	210.00	250.00
TOTAL	453.80	973.68	1193.67	1334.05	1391.60	1475.71	1520.27

84-87  
4388

TABLE 15

PROJECTED FEDERAL COSTS UNDER S.529  
THE SENATE IMMIGRATION REFORM BILL

	1984	1985	1986	1987	1988	1989	1990
BLOCK GRANTS	165.00	330.00	330.00	275.00	220.00	220.00	110.00
AFDC				31.69	81.13	116.71	192.72
FOOD STAMPS				37.71	99.63	147.25	251.86
SSI				7.43	19.59	28.69	48.52
MEDICAID				36.34	79.63	83.60	151.59
DISABILITY INSURANCE	60.00	75.00	100.00	130.00	165.00	210.00	250.00
TOTAL	275.00	405.00	430.00	520.17	664.98	805.74	1004.68

FY84-FY87  
FY88-FY90  
1580.17  
2475.40



Mr. MAZZOLI. The reason I ask you is because you say that you assume, as I understand it, that the cost assumptions were not changed this year. Yet, for example, the mid-1970's HHS study said that only one-third of one-third percent of SSI payments went to undocumented and yet HHS assumed that aliens comprised 2½ percent of the population.

So there are some questions we had on how last year's assumptions were put together.

This year we want to see the assumptions to see if we feel that they have been in part corrected.

Do you take into consideration in your assumptions any of the so-called give factors? These people are working. They have been paying taxes in. When they work, they will pay taxes in. Is it considered that this figure down here is somehow a net figure?

Mr. PELLECHIO. In other words, you would like to see what contributions these working aliens made to general revenues.

Mr. MAZZOLI. What I would like to answer is a question I raised in my own mind. How much will these people be likely, once they are legalized, to come forward and be takers, when we know them to be in this country now, and by almost every study that we have here to be very slight takers. Some of them manufacture identities and take advantage of it, and some because of sloppy state activity take advantage of welfare knowingly. But the truth of the matter is that a lot of these people are paying withholding taxes which they are not getting back because they don't want to identify who they are, paying social security taxes which they may not ever claim later.

I am wondering if the assumptions take into consideration any of this for these very same people who may, if they come out, take advantage of food stamps or maybe go on SSI?

Mr. PELLECHIO. During a period of benefit reciprocity a person, in most cases, would not be working, so the concern you are raising would not affect those estimates very much. But I want to answer your question directly.

No, we don't calculate the tax revenue generated by the employment of illegal aliens. I don't wish to sound parochial, but the costs to our program are what we can focus on and calculate. One problem we have here, Mr. Chairman, is that we are talking about a significant change in the environment for these individuals and right now they are getting nothing.

Under the Senate bill, which is providing assistance at an amount somewhat lower than the House bill, we are talking about an average annual benefit of \$3400 which is only \$200 less than the average annual benefit for AFDC. It is very hard to predict behavior when you have that dramatic a change in eligibility for public assistance.

So maybe the best we can do is use the U.S. population because that is what we are making these people.

Mr. MAZZOLI. It is very hard, certainly, to look forward with complete accuracy, but the statistics we have are that the people in this category are really right now very energetic and hard-working groups of people. They don't take advantage of the system partly because maybe they are afraid to and partly because it is not their psychology. They just want to work. If they become legalized, they

will have a better opportunity to raise their wage standards and take better jobs because then they don't have to be furtive. They can come out.

I think it is at least arguable that the very people who would be legalized instead of taking advantage of welfare programs, might be likely to leave their present job to improve their situations. They are likely to continue, even after legalization, in the low degree of participation in the welfare system.

You might want to try to work on that.

The gentleman from California?

Mr. LUNGREN. Thank you, Mr. Chairman.

Obviously, the most difficult problem is we don't know what the factors are. We have no accurate estimate of how many illegal aliens there are in this country. It ranges all the way from 3½ million to 12 million. I think it is in the upper ranges, but mine is a guess like anybody else's.

Mr. Chairman, one thing we have learned is that the American governmental system has the ability to change your work habits. We managed to take the refugees from Southeast Asia and make them pretty dependent pretty fast. We are dealing with unknowns. I think we ought to admit to the American public that whatever decisions we make is going to be somewhat costly and we ought to do with that full acknowledgment of that fact.

Mr. Pellechio, I would like to say that I appreciate some of the things you say here, because you have expressed some of the concerns I had when we were marking up the bill in committee even though I am from a State that is very, very concerned and had many people wanting us to have the 100 percent assured reimbursement of State welfare costs.

I share your concern about the lack of cost control at the Federal level and the lack of incentives for cost control if we guarantee them 100 percent percent of whatever unknown may exist.

I think your comments on section 303 are appropriate and I hope that we would adopt a Senate version on that. With respect to section 301, perhaps we have not used the precise language and we would certainly entertain any language amendments you would like to present to us, because the specifics of what we intend there are those emergency type medical needs and the public health type medical needs that could cause problems with the rest of the population if there are not adequate services provided.

We wanted to make sure that those specifics were protected and recognized as a Federal responsibility there. And then, of course, I prefer the block grant approach. I think what happened is what often happens in Congress. We compromised putting everything in. We put three alternatives in and left them all in and that is why the cost is three times as much as the Senate bill.

With regard to section 302 about bringing up the registry date, I think I could tell you that most of us on the committee accepted that without realizing that that would allow those people brought into the mainstream to immediately qualify for full welfare benefits and it was certainly unintended and I would hope if we do maintain the updating of the registry date, we would put the respectability with respect to medical and welfare assistance that we have placed on the others.

Rather than ask a question, I will just say we do appreciate receiving all the assumptions that you work from so that we may be able to justify our figures, but I think we also ought to lend a note of caution here that since we are changing the environment in which many of these people would live in a legal sense and making them eligible for the first time for such welfare benefits extremely difficult if not impossible to accurately predict what their behavior pattern might be.

I say that because I have seen the refugee experience where we took people who were hard-working people and very much dedicated to being independent and because of the system we created unintentionally here we have made them very, very welfare dependent as a group.

I am not castigating all of them. I am just saying it is a fact of life. We did not anticipate it. We came in and assured ourselves that would not happen and I would hope that we would recognize that human nature being what it is, that is a possibility here and that it is why I think it is extremely important as to what the precise welfare and medical assistance allowances are made in the bill.

Mr. PELLECHIO. I want to commend you for the points that you make and just state perhaps again that probably the main purpose of this bill is to make this population assimilate into our current population of citizens and I think our assumptions reflect that as best we can.

Mr. MAZZOLI. Thank you very much.

The gentleman has a couple of seconds. Let me just use some time to ask a couple of quick questions.

Would you have any estimates of what money might be recovered to the Federal Treasury by employer sanctions? They would free up at least some jobs which are currently held by the undocumented, so American citizen could take them. Do you have any documents on that?

Mr. PELLECHIO. No; we really don't have that information in the Department of the Health and Human Service and I would have to defer to the Department of Labor for that information.

Mr. MAZZOLI. Thank you.

Do you have some feeling as to whether or not this committee can limit the amount of participation of some of the people here in the Federal welfare programs?

Mr. PELLECHIO. I think the spirit of the language on the medical assistance is to achieve that. The problem is, it appears to me from reading it, that it was written without respect to the existing programs and that is where it becomes difficult. I think trying to provide some limited medical coverage in the context of the block grant is the best strategy because it leaves states the flexibility to determine exactly what that special medical assistance is.

If you try to define medical assistance in the context of the existing programs, you run into the discrimination issue that I think was raised before.

Mr. MAZZOLI. That has been raised. Are there any other Federal programs you are aware of that limit the ability of certain people to obtain certain Federal benefits?



Mr. PELLECHIO. Well, the current programs are limited to immigrants who have sponsors. So, our example is a good starting point for this bill. I am not aware of any others.

Mr. MAZZOLI. It would be nice for us to find out if they are because some people have questions as to whether or not the committee could limit with respect to temporary residents and perhaps even permanent resident aliens their opportunity to participate in welfare, except for the ones that we designated which are emergency health, disability and SSI. I just wonder if you are aware of anything that has been tried like that before?

Mr. PELLECHIO. Well, the only thing that comes to mind right away as I try to broaden my horizons on this to answer your questions, it may not be the best answer, but States have the option of covering two parent families under the AFDC program and about half of our states do that. That is allowed under current legislation and regulation.

Mr. MAZZOLI. Let me finally say, when you talk about that part of the health provision being ill-defined and perhaps poorly laid out, do you have any suggestions that we could look into and use in the bill that would not run afoul of your objections?

Mr. PELLECHIO. Well, our concern is having two programs of medical assistance, one more restrictive than the other. We are going to share assumptions about the cost estimates with you and maybe in staff to staff contact we can work on language. I think within the Department of HHS, we made a very serious effort to understand the language and fit it into the context of the programs that we have and cost estimation procedures based on those programs and we would be delighted to try to share our concerns.

Mr. MAZZOLI. Thank you.

The gentleman from Florida?

Mr. McCOLLUM. Thank you, Mr. Chairman.

Revisiting for a minute the registration area or moving up the registry date, I should say, isn't it true that those who have been here before 1973 would be the least likely to be welfare dependent? They are the ones who have been here the longest.

Mr. PELLECHIO. They would be the people most like our current population of legal residents. As to their participation in these programs, we feel the safest thing is to assume are the participation rates for the U.S. population.

Mr. McCOLLUM. Have you increased your participation for those who are post 1973 in computing the data that you have given us?

Mr. PELLECHIO. No; I think the answer to the spirit of your question is no. We try to make adjustments for demographic characteristics for the illegal alien population as much as we can. It is a younger population and consequently that affects participation. So we try to use the demographic information we have. After those adjustments when it comes down to participation rates, we assume the same rates.

Mr. McCOLLUM. So administrations as far as your discussion point with regard to registry date and the opinion of the Department, there has been no effort to break down the two groups as far as participation is concerned although you are telling us today that the people here prior to 1973 in your judgment would be more likely to be fitting the norm of American citizenry, but those that

are here more recently are more likely to be dependent and more likely to need the welfare; is that not true?

Mr. PELLECHIO. I don't think that is true.

Mr. MCCOLLUM. Do you think everybody would be average regardless of whether they came here in 1979 or 1980?

Mr. PELLECHIO. We assume different rates of participation in the legalization program. If you have the registry setting up a separate legalization program, participation rates are different for the registered and the legalization program. But once we make those assumptions about participation rates and legalization, then the welfare dependency rates are the same for both populations.

Mr. MCCOLLUM. Well, it occurs to me that you have got a number of variables in here in the registry date provisions. One of them has not been discussed at all and I am not going to ask you to comment. I will just make the comment is the fact that people who have been here before 1973 under the registry provision would not all be coming forward at once. They don't have to come forward within a year's given period of time and there is no reason to believe they would come forward in nearly the numbers that others would come forward under the legalization provisions.

I might also ask you isn't it true that if we adopted the registry date concept and did not have legalization at all, just adopted the 1973 date that the cost to the Government would be considerably less than what you have got here attached?

Mr. PELLECHIO. Yes.

Mr. MCCOLLUM. I have a question. You have not done any studies on that, have you, as such, as far as the cost? Could you do those for us? I don't think you have. That is what would be the cost of just the registry date provision if we moved it up to 1973 and did not do legalization. I don't have that here at all in your testimony.

Mr. PELLECHIO. We have done section-by-section costs. The cost for updating the registry between fiscal year 1984 and fiscal year 1987 is \$61 million. But that assumes the other sections in the House bill.

Mr. MCCOLLUM. That assumes that we are going to be granting legalization?

Mr. PELLECHIO. Yes; and you have the amendments as well to provide medical assistance.

Mr. MCCOLLUM. Let's assume all of those, but would there be any reason to believe the \$67 million would be a different figure if we did not have legalization for the 1973 registration.

In other words, is that going to change anything?

Mr. PELLECHIO. Yes. First of all that is \$61 million. I am sorry if I said \$67 million. If we had the registry amendment with the Senate bill, S. 529, the cost of that amendment in addition to the block grant and the other programs would be \$489 million.

Mr. MCCOLLUM. I don't believe you have got it here for me in the way I want it today and I would like to ask you if you can provide us with the figures showing us, assuming there is no legalization, what the cost of moving the registry date to 1973 would be assuming that everything else in the bill except eliminating the legalization would disappear.

[The information follows:]





Mr. McCOLLUM. Mr. Chairman, may I ask the indulgence to ask one other question in another area?

Mr. MAZZOLI. Certainly.

Mr. McCOLLUM. The provisions you got with regard to the question of whether the block grant is used or whether we go to some other system such as this in the bill begs one issue that has been around quite awhile with me. Your testimony seems to clarify that, but I want to be sure it does. Under the block grant concept, you say, the grant would permit general assistance benefits, emergency medical care and other services depending on local circumstances, et cetera. We had a lot of questions because Florida is not a general assistance State. We have had a lot of questions with the Cuban, Haitian immigrants over whether or not if we passed block grant provisions, general assistance States would get the short-end of the stick. Can you assure me that if we passed a block grant provision that Florida, with no general assistance laws whatsoever would be allowed to have full participation and be able to use the moneys as they saw fit for offsetting whatever costs there were down there?

Mr. PELLECHIO. The amount allocated under the block grant would be based on a number of illegal aliens in the States. There would be an initial allotment to reflect the numbers that INS has now. Some money would be held back to make adjustments based on new information, but the money we anticipate would be allotted based on numbers of aliens.

There would be no discrimination in the allocation of funds based on what State programs there are in particular states.

Mr. McCOLLUM. I appreciate that.

One followup, and that is just a comment. There has been a lot of discussion on block grants and a lot of discussions on what is in this bill. The one thing I have heard no discussion about and I would appreciate before we vote and markup on this bill, again your comments on, from the Department, and that is the Department's view with regard to a matching funds approach since you are concerned apparently about waste in State government and no incentives.

I have not heard anyone come forward with a matching fund idea whether there could be a realistic approach worked out for the States to put up a certain percentage, maybe 50 percent, maybe less, and the Federal Government put up the balance toward any of these objectives.

I don't know if you have a gut reaction to that that you want to give us today or not, but I would surely appreciate an analysis of that and any cost figures that you might be able to develop for that concept because that might be an ultimate compromise.

Mr. PELLECHIO. Yes. A gut reaction is that it is a very good proposal and our argument against the 100-percent Federal reimbursement is really based on just that. Certain shared responsibilities is the best way to bring in some fiscal discipline into this. As for such a cost-sharing approach, I would have to get back on that.

Mr. McCOLLUM. But matching would be different than a block grant, so I would appreciate it if you would get back to us on that. [The information follows:]

Mr. PELLECHIO. I would like to reassert that the block grant approach is the best way for the Federal Government and State governments to share responsibility for

this population while insuring fiscal discipline at both levels. The administration continues to support the block grant provisions included in the Senate bill (S. 529).

Mr. MAZZOLI. I have one further question.

The block grant is going to be a per capita payment. Is that how you see it to the States that apply?

Mr. PELLECHIO. I guess that needs to be worked out because there is language in the Senate bill about net expenditures and that gets back to your point about the tax contributions being made by illegal aliens.

Mr. MAZZOLI. Usually in block grants there is so much money that we have, and communities or States apply for a certain amount of money. I am just curious as to how this happens for Long Beach, Calif., in your view.

The city people there have to calculate the legalized undocumented aliens within the city of Long Beach in order to then make an application for so many dollars. They make it on a head count. If they have 10,000 legalized, they are asking for a certain amount of money to help with the problem.

Mr. PELLECHIO. In the Senate bill there is no substate allocation. The allocation is made to the States based on the total number of illegal aliens in that State. It is the State's responsibility to allocate the money.

Mr. MAZZOLI. So you would decide how much per head, and then if you decided how many of those people are in California, California would get  $x$ -number of dollars? It is up to Long Beach to go to Sacramento and decide how much they get.

Mr. LUNGREN. When you say allocated on the number of illegal aliens, don't you mean it would be allocated per capita on the number of those illegal aliens who were going through the system to become legalized?

Mr. PELLECHIO. Yes, that is right.

Mr. MAZZOLI. Those who come forward?

Mr. PELLECHIO. Yes, that is right. I think we mentioned before that 75 percent were permanent resident aliens and 66 percent—

Mr. MAZZOLI. You figure that 75 percent of the population will come forward?

Mr. PELLECHIO. Yes.

Mr. MAZZOLI. We always hear 20.

Mr. LUNGREN. That is as good a guess as any.

Mr. ENDRES. Mr. Chairman, I have a quick question. There has been some testimony on the provision of medical assistance to aliens in the case of serious illness or injury. I wonder if you could submit for the record the particular administrative problems that you would envision flowing from that particular provision.

Second, wouldn't it be less expensive to provide a case-by-case review of this waiver authority on behalf of the Attorney General rather than simply using existing medicaid programs and providing the full range of benefits under that program to all aliens legalized?

Mr. PELLECHIO. I don't know the answer to your question, but what would be more or less costly. I have to submit an answer for the record.

Mr. MAZZOLI. I am not sure I fully follow the question myself. What I guess I am driving at is, cannot this Congress say that a

certain group of non-U.S. citizens are entitled to something less from the welfare system than U.S. citizens are entitled to? Can't this be done? That is the question we are asking. As my colleague says, it may be a question out of your area because it may be a legal question. If you feel uncomfortable or unqualified to answer because it is not in your bailiwick, that is fine. That is the question we are all driving at.

Mr. PELLECHIO. I think the Department of Justice believes that can be done.

Mr. MAZZOLI. In other words, you see problems in it from your area which is to administer it, but you are not, at this point, testifying as to the legal abilities and the constitutionality of limiting the availability of certain welfare benefits to certain non-U.S. citizens.

Mr. PELLECHIO. That is correct.

Mr. MAZZOLI. That is what I was just saying. We are seeking that information. You can help us on the administrative side, and we have to look elsewhere for the constitutional aspects.

If there are no further questions, the subcommittee stands in recess until 9:30 tomorrow morning.

[Whereupon, at 12:30 p.m., the subcommittee was adjourned to meet at 9:30 a.m., Thursday, March 10, 1983.]





# IMMIGRATION REFORM AND CONTROL ACT OF 1983

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THURSDAY, MARCH 10, 1983

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES, AND INTERNATIONAL LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 10:30 a.m., in room B-352, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Hall, Smith, Lungren, and McCollum.

Staff present: Skip Endres, counsel; Harris Miller, legislative assistant; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. The subcommittee will come to order.

As a matter of primarily business, Congressman Charles Wilson has a statement which will be made a part of the record. The Congressman was unable to come today because of a conflict.

[The statement of Mr. Wilson follows:]

## STATEMENT BY REPRESENTATIVE CHARLES WILSON, BEFORE THE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

Thank you, Mr. Chairman, for the opportunity to testify in support of legislation to stop the flow of illegal aliens crossing our borders.

I doubt that anyone has an accurate count of the number of illegal aliens currently residing in this country. However, if you consider that an overworked and understaffed Border Patrol apprehends thousands of illegal aliens each year trying to get in, you can imagine how many more actually succeed.

The flow of illegal aliens into the United States is particularly significant under the present high unemployment situation. They are willing to work for very low wages under extremely bad conditions. At the same time, illegal labor no longer belongs exclusively to the agricultural sector or entry-level jobs—illegal aliens are moving into higher paying construction and manufacturing jobs. This clearly has an adverse impact on employment.

Illegal immigration costs us in other ways, too. Some illegal aliens are taking advantage of welfare programs—food stamps and subsidized housing, for instance—to which they are not legally entitled. And because recent federal court decisions mandate a free public education for illegal alien children, it is going to take more and more local tax dollars to run our public school systems.

The obvious question, then, is what do we do about it? I cosponsored the legislation in the 97th Congress to increase enforcement of the immigration laws, prohibit the knowing employment of illegal aliens and place a ceiling on the total number of legal immigrants. I strongly support passage of legislation as soon as possible in this Congress to deal with the problems I have mentioned.

We must expand the Border Patrol to provide the number of personnel necessary to control illegal immigration. Currently, enforcement of existing immigration laws is haphazard because we just don't have the manpower. East Texas had certainly fallen victim to that fact. During my 10 years in Congress, I have only been able to

get one "sweep" through the district to locate illegal aliens and deport them. The Houston office of the Immigration Service can't even cover Houston adequately, let alone the 20 counties north and east of them.

Legislation must provide both civil and criminal penalties for employers who knowingly hire illegal aliens. What is the incentive for thousands of illegal aliens to leave their homes for whatever uncertainties lie inside U.S. borders? Jobs! A lot of employers are more than happy to use cheap and willing illegal labor. But if they face a penalty for doing so, those jobs would disappear and word would certainly get back to potential immigrants in their homelands.

Although I am not proposing a specific ceiling on legal immigration, I am confident that your Subcommittee will provide for the establishment of a realistic policy with sufficient flexibility to effectively control immigration into the United States.

Again, I appreciate the opportunity to endorse your efforts and will strongly support the legislation to revise and reform the Immigration and Nationality Act to control illegal entry into the United States.

Mr. MAZZOLI. We welcome Mr. Thomas R. Donahue, secretary-treasurer of the AFL-CIO, who has been before our committee at different times, and his colleagues, Mr. Roberts and Mr. Denison.

Mr. Donahue, you can proceed as you see fit.

#### TESTIMONY OF THOMAS R. DONAHUE, SECRETARY-TREASURER, AFL-CIO

Mr. DONAHUE. Thank you, Mr. Mazzoli.

You have the written testimony which we would like to submit. I would like just to take a few moments to summarize it for you. We obviously are in that group of people who believe there is an urgent need for action on this issue.

We are here to reaffirm our historic support for an immigration policy consistent with the Nation's tradition for compassion and humane treatment, and yet, for an immigration policy that will maintain the principle of the Nation's concern for the welfare of American workers and the safeguarding of jobs and labor standards of American workers.

Clearly, the immense flow of illegal immigrants has to be stopped and replaced by a fair and enforceable system. The fact is that the overwhelming majority of the illegal immigrants who come to this country come to work and are too often exploited by unscrupulous employers who seek to use those illegal immigrants and force them to work at lower than the going wages, and under substandard working and living conditions.

We have in 1981 and 1982 testified before the Congress that the original Mazzoli-Simpson bill was, in general, consistent with the goals of the AFL-CIO and testified at that time that it should with some modification be adopted.

In the intervening 2 years, both your original bill and our perception of what ought to be done to achieve sound immigration policies and practices have undergone some change.

Today, I would like to tell you where we stand, to explain a few of the modifications which we think the present bill requires and urge action on it.

Let me first just set forth our basic concerns. We seek a legislative prohibition on the employment of undocumented workers. We think it is the single most important deterrent to illegal immigration. Any bill that is going to be considered has to address that problem, and has to address the widespread and deeply held fears



that the enactment of employer sanctions would lead to employee discrimination.

Obviously, it is required that any bill that provides sanctions also has to provide employers a sure and simple means of complying with the law. And we support an identity and eligibility verification system that is secure and would assure the employer that his good faith reliance on that system would meet the law's requirements.

We believe, at the same time, steps have to be taken to legalize the status of those aliens who have become settled, contributing members of their communities. And we support the most generous practical legalization program for such persons.

We believe that the importation of nonimmigrant workers for short-term or long-term temporary jobs ought to be limited to the greatest extent possible and confined to the specific purposes that are presently authorized.

That has two practical implications. Nonimmigrant visas ought to be issued only to persons who meet the specified requirements, and the Congress should not enact any guest worker program.

Finally, we believe that border and interior enforcement of the immigration laws has to be strengthened by giving the Immigration and Naturalization Service the additional resources necessary to do that job.

Let me just comment briefly on the four or five points that are principally at issue here.

On the issue of employer sanctions, we clearly believe that sanctions without any effective prohibition become simple moral preachments and will be ineffective.

We understand, as well, the limitations of criminal law enforcement processes, and we recognize the reality that a criminal process will be used rarely. So the civil remedies that ought to cause a potential violator to think twice and hopefully to refrain from committing the act, have to be provided.

While we have doubts about the efficacy of the administrative enforcement procedures in title I of the bill, in terms of their complexity, we think that with relatively narrow and straightforward amendments, that procedure can be made to work.

We think that what is needed is a substantial increase in the civil penalties for knowingly hiring unauthorized aliens and a graduated schedule of penalties for repeat violators.

We think that the Attorney General should be granted the authority to obtain an injunction against any employer who is found to have committed a second such violation or who engages in a pattern or practice of such hiring.

And we think there has to be created a private right of action for persons aggrieved by the knowing hiring of an undocumented alien. We think that that private right of action ought to be modeled on the right to sue which is given individuals under title VII of the Civil Rights Act.

And finally, we believe that the actions under the statute to collect the civil penalties should be brought in the Federal courts of appeals which are the normal vehicles for such enforcement actions, and not in the district courts as the bill provides.

In terms of the identify verification system, we believe that a secure and forgery-proof system is essential. We think the legislation has to enable employers to ascertain in an easy fashion the eligibility for employment of the people they hire.

And we think that the bill goes far toward meeting those criteria. But we believe again the bill falls somewhat short.

The exemption provision of the bill, the exemption of employers with three or fewer employees, is not in our view justifiable, and we think that the requirements of the bill ought to be universal.

We think that is an indispensable protection. We think that a provision should be added to the requirement now in the bill that under the verification system, which the President is to establish, the verification may not be withheld for any reason other than that the individual is an unauthorized alien.

We think that is a fundamental safeguard. But the bill should provide as well, once such a verification is issued, whether it is in the form of a document or some other form, that it may not be revoked for any reason other than a legal determination after proper proceedings that the person is, in fact, an unauthorized alien.

We believe the verification system is so important that it must be safeguarded by enforcement provisions of greater substance than those in the bill, and we have in mind the civil penalty, the graduated schedule of penalties which I referred to, and the injunctive relief and right of individual action.

In terms of the discrimination concerns which all of us have about the legislation, we think that there are two proposals to meet that concern offered in the House last years which seem to us well-suited to the prevention of such discrimination.

One of those would require employers to keep the record of the names and addresses of persons who apply but are not hired for a job within some designated period prior to the time the job is filled.

That record must be made available to law enforcement agencies.

The other provision, we believe, should be added to create a private right of action so that a job applicant who believes himself or herself to have been discriminatorily denied employment may challenge that denial through the administrative system provided in the bill.

In terms of legalization, we believe, obviously, that as we move to close our borders to those persons who are not entitled to enter the country, we have to regularize the status of those persons who are here, who function as lawabiding and contributing citizens in our communities.

The AFL-CIO, at its meeting last month, adopted a resolution calling for the most generous practical amnesty for these people. In legislative terms, we think that means that permanent legal resident status ought to be made available to aliens who have lived in the United States continuously for some period of time, and who have demonstrated attachment to the community.

We are very seriously concerned about the two-tier system proposed in the bill, which would give temporary legal status to some, and we see a host of human and administrative problems if that system is adopted.

Finally, we believe that when an eligible alien applies for regularization of status, the Attorney General should be required to

adjust that status. The language of the bill says "The Attorney General may, in his discretion . . .". We see no reason for conferring that discretion.

If the Congress makes the judgment that legalization is good policy, then the Attorney General should be obligated to follow that policy.

In terms of the H-2 program, we continue to strongly oppose any program which would permit the importation of foreign labor to undercut the wages and working conditions of American workers.

All of the bracero programs that we have been through and the guest worker programs that are proposed are contrary to the interests of American workers, whatever you call them.

We have been down that road before, we had a bracero program in this country, it was tried and found wanting, and finally rejected by the Congress 19 years ago.

We understand the contention of the agricultural employers who have apparently become dependent upon a ready supply of undocumented workers, and now seek some alternative in the form of unlimited numbers of H-2 temporary workers.

We just cannot understand the acceptance of that view at a time of unprecedented unemployment in the United States, and think that there is simply no demonstrable reason for any bracero or any guest worker program.

We commend to this committee the work that has been done on this subject last year by the House Education and Labor Committee, and ask your fair examination of those proposals. The committee looked at all of the current and proposed limitations on the H-2 program, and called for limits on the length of time of certifications that are issued; and certification by the Department of Labor, which has historically been charged with that task; and the requirement that there be nationwide recruitment of workers before any certification of temporary foreign workers is given. They call for the retention of the present certification test, namely that there are insufficient qualified workers available in the Nation to perform the work, provisions for employer disbarment, an application, filing time of at least 80 days before the need and a prohibition on the issuance or continuation of a certificate where a strike is in progress.

All of those things are simple codifications of present regulations. Finally, in terms of the border, we strongly support an increase in border patrol and other enforcement activities of the INS.

We believe that that is a purely Federal function that has to remain in the province of the Immigration and Naturalization Service, and it is disturbing to us to learn that the Attorney General has directed the INS to foster State and local law enforcement involvement in the policing of the Federal immigration laws.

We think that the INS requires adequate support by the executive branch, adequate funding by the Congress, and that those two things are the heart and soul of having an effective Immigration Service, an effective border control.

We think the funding and staffing of the INS has to be increased so that they can control immigration. If we are going to do that, it is going to take better pay, better working conditions, better bene-



fits and a resolution of a number of very long-standing labor/management problems in the Immigration and Naturalization Service.

We think, finally, that there is a need to restate the essential colorblind enforcement of the Nation's laws on immigration and asylum. There is a very widespread perception that the Haitian refugees who sought asylum in the United States and continue to seek such, have been treated in a manner quite different from treatment we have accorded other refugees.

And we think that kind of differential treatment is an affront to the dignity of those Haitians and think that the Congress and administration ought to reject that kind of difference.

Finally, Mr. Chairman, in summary, we believe, as you obviously do by now, that this is a complex, difficult, and politically charged issue. We support your efforts to get action this year on a comprehensive and humane immigration legislation, consistent with the needs and goals of American workers.

Thank you, Mr. Chairman.

[The complete statement follows:]

**TESTIMONY OF THOMAS R. DONAHUE, SECRETARY-TREASURER  
AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,  
TO THE HOUSE SUBCOMMITTEE ON IMMIGRATION  
ON H.R. 1510**

**March 10, 1983**

I appreciate this opportunity to present the views of the AFL-CIO on immigration reform. We recognize the urgent need for action by Congress on the complex and difficult issue of immigration.

The AFL-CIO re-affirms its historic support for an immigration policy that is consistent with the nation's tradition for compassion and humane treatment. We want an immigration policy that maintains the principle of concern for the welfare of American workers and safeguarding the jobs and labor standards of American workers.

The flow of illegal immigrants into the United States must be stopped and replaced by a fair, enforceable program of legal immigration. The overwhelming majority of illegal immigrants come to America to support themselves and their families. Unfortunately, too often, unscrupulous employers prey upon these illegal immigrants and force them to work at low wages under substandard working and living conditions in an atmosphere of fear and exploitation.

In 1981 and 1982 the AFL-CIO told Congress that the original Mazzoli-Simpson bill was in general consistent with the goals of the AFL-CIO, and should, with some modification and improvement, be adopted. Since that time, both your original bill and our perception of what must be done to achieve sound immigration policies and practices have undergone change. Today I want to tell you where we stand, to explain the modifications that we believe the present bill requires, and to urge favorable action upon the bill thus modified.

Let me first set forth some of our basic concerns.

(1) A legislative prohibition on the employment of undocumented workers -- backed by substantial and workable sanctions to deter employers from violating that prohibition -- is the single most important deterrent to illegal immigration. We know from experience that there are employers who will, given the chance, capitalize on the desperate need of undocumented aliens to find and keep a job. We know also -- particularly by reason of the concerns voiced last year in both houses of Congress -- that there are widespread and deeply-held fears that the enactment of sanctions will lead to employment discrimination against individuals on the basis of their national origin or race. Any bill worth passing must address both aspects of the problem.

(2) Fairness requires that a bill providing such sanctions must also provide employers, who wish to comply with the law, a sure and simple means of so doing. This means that the bill must establish an identity and eligibility verification system that is secure, and must assure the employer who uses this system that his good faith reliance on the system will meet the law's requirements.

(3) At the same time, steps must also be taken to legalize the status of those aliens who, though their presence in the country is not authorized, have become settled, contributing members of their communities. Thus, we support the most generous practical legalization program for such persons. Unless that is done, we will as a society be contributing to the continuing victimization of an underclass, made up of those whose fear of deportation makes them vulnerable to exploitation by unscrupulous employers and who are unable to protect themselves or to call upon the government for protection.

(4) Importation of foreign non-immigrant workers for short term or long term temporary jobs must be limited to the greatest extent possible and confined



to the specific purposes presently authorized by law. This has two practical implications: First, administration of the existing law must be substantially improved so that non-immigrant visas to workers are issued only to persons who meet the specified requirements. Three present immigration programs have an adverse impact on American workers -- those covering H-1 visas, H-2 visas and B-1 visas. All three have been misused to admit non-immigrant aliens who do not meet the requirements specified by Congress. Second, the Congress should not enact any "guestworker" or "bracero" program.

(5) Border and interior enforcement of the immigration laws must be strengthened principally by giving the Immigration and Naturalization Service the additional resources necessary to do that enforcement job.

Let me deal with these concerns in more detail.

#### Employer Sanctions

Substantial and workable sanctions for violation of a prohibition are the heart and soul of the prohibition. Unless such sanctions are included, enacting new prohibitions is a meaningless formality. The present immigration law may be the single best demonstration of that proposition.

We understand the limitations of the criminal law enforcement process. The cost, the competing demands upon federal prosecutors, and the reluctance of the government in matters of this kind to proceed with anything less than the clearest cases means that criminal process will be used rarely.

Thus, civil remedies that will cause a potential violator to pause before action and, upon reflection to refrain from committing a violation, must also be provided. And while we have doubts about the efficacy of the rather complex administrative enforcement procedure in Title I of the bill, we believe that with relatively narrow and straightforward amendments that procedure can be made to work.

In essence what is needed, we believe is: (1) a substantial increase in the civil penalties for knowingly hiring unauthorized aliens and a graduated schedule of such penalties for repeated violations; (2) granting the Attorney General the authority to obtain an injunction against any employer who is found to have committed a second such hiring violation or who engages in a pattern or practice of such hiring; and (3) a private right of action for persons aggrieved by the knowing hiring of an undocumented alien. Such a private right of action should be modeled on the right to sue given to individuals under Title VII of the Civil Rights Act. Finally, we believe that actions to collect civil penalties should be in the federal courts of appeals, which are familiar with such enforcement actions, not in the district courts.

#### Identity Verification

The AFL-CIO believes that a system for verification of the identity of job applicants that will demonstrate the individual's legal entitlement to work and that is secure and forgery-proof is essential. As the resolution on immigration recently adopted by our Executive Council stated, "The legislation we seek must enable employers to ascertain in simple fashion the eligibility for employment of those they hire, and it must ensure that employers cannot use these sanctions as an excuse not to hire legal resident aliens or citizens who 'look foreign.'"

The bill goes far toward meeting those criteria, particularly through its requirement that within three years the President is to take steps necessary to render the verification system truly secure. But with regard to these provisions, too, we believe the bill falls somewhat short.

The exemption of employers of three or fewer employees cannot be justified. Universality of the requirement that employers inspect and attest to the adequacy of a job applicant's documents is an indispensable protection both for those

employers and for the Hispanics and other minorities who reasonably fear that discrimination may follow the bill's enactment.

We urge also that a provision be added to the requirement now in the bill that under the verification system which the President is to establish, "the verification may not be withheld for any reason other than that the individual is an unauthorized alien". That is a fundamental safeguard, but it does not go quite far enough: the bill should provide as well that -- once issued -- any such verification, whether in the form of a document or in some other form, may not be revoked for any reason other than a legal determination, after proper proceedings, that the person is in fact an unauthorized alien.

It is our view that the verification system is so important that it must be safeguarded by enforcement provisions of greater substance than those provided in the bill. We have in mind increases in the civil penalty and a graduated scale of penalties for first, second and subsequent employer failures to comply with the identity verification requirement along the lines proposed by the House Education and Labor Committee. And because injunctive relief is so clearly the most effective remedy, we believe that provision for such a remedy must be made.

#### Discrimination

I spoke a moment ago about the discrimination that some fear may be encouraged by enactment of this bill. Two proposals to meet this concern that were offered in the House last year seem to us well-suited to the prevention and correction of any such discrimination. One of these would require employers to keep a record of the names and addresses of persons who apply, but are not hired, for a job within a designated period prior to the time the job is filled, which record must be made available to law enforcement agencies. The other provision would create a private right of action so that a job applicant who believes himself or



herself to have been discriminatorily denied employment may challenge that denial through the administrative system provided in the bill.

### Legalization

Legalization is the counterpart to the prohibition on hiring of undocumented workers. As we move to close our borders to those not entitled to enter, we must regularize the status of those persons who are in our midst, functioning as law-abiding and contributing residents of their communities. These persons are uniquely disabled from claiming equal treatment, whether in wages and working conditions, the right to bargain collectively, or even the right to local police protection. Their susceptibility to deportation renders them victims. The AFL-CIO Executive Council resolution therefore called for "the most generous, practical amnesty for these people."

In legislative terms, we believe this means that permanent legal resident status should be made available to aliens who have lived in the United States continuously for some reasonable period of time and who have a demonstrated attachment to the community. We are seriously concerned about the two-tier proposal in the bill which would give only temporary legal status to some. We foresee a host of human and administrative problems, if a two-tier system is adopted.

Finally, when an eligible alien applies, the Attorney General should be required to adjust the alien's status to that of legal resident. We do not know why H.R. 1510 provides that "The Attorney General may, in his discretion..." make that adjustment, but it appears to us that if Congress makes the judgment that legalization is good policy, then the executive branch should be obligated to follow that policy.

### The H-2 Program

The AFL-CIO continues to oppose any program which would permit importation of foreign labor to undercut the wages and working conditions of American workers. All such "bracero" or "guest-worker" programs are contrary to the interests of American workers, whatever label may be given them. A bracero program was tried and found wanting and was rejected by Congress in 1964.

We are aware of the contention by agricultural employers and their advocates in the Congress that those employers, having become dependent upon a ready supply of undocumented workers, cannot now be deprived of that manpower source without being provided an alternative in the form of unlimited numbers of H-2 temporary workers. We cannot comprehend such an argument at a time of unprecedented unemployment and want. We know first hand, we read in the daily press, and we see on the television, great numbers of persons pleading for a job, any job. Even if there is not a perfect match between the jobless and the agricultural jobs that we are told will go unfilled if Title I is approved, we believe the burden must be on those making the anticipatory hardship claim to provide evidence, not simply argument.

We continue to support the recommendations of the Select Commission on Immigration and Refugee Policy that the government, employers and unions should cooperate to end dependence of any industry on a constant supply of temporary foreign workers, to remove current disincentives to hiring U.S. workers, and to maintain labor certification by the U.S. Department of Labor.

On the particulars, we commend to this subcommittee the work done on this subject last year by the House Education and Labor Committee. I wish to underline the importance of protections contained in that Committee's proposals for both American workers, who must have first claim on jobs on these shores, and those foreign workers here temporarily to fill positions for which, demonstrably, there

are no American workers. These include a limit on the length of time of certification; certification by the Department of Labor; the requirement for nationwide recruitment of United States workers before the certification of temporary foreign workers may be made; retention of the present certification test (that there are insufficient "qualified workers available" to perform the work); provisions for employer disbarment; an application filing time of at least 80 days; and a prohibition on issuance or continuance of a certification where a strike is in progress. The points I have just mentioned are no more than codification of present regulations.

**Better Border Control.**

We strongly support an increase in border patrol and other enforcement activities of the Immigration and Naturalization Service in order to prevent and deter the illegal entry of aliens into the United States.

It should go without saying, but regrettably must be said, that this purely federal function must remain the province of the Immigration and Naturalization Service in order to assure that it is the laws of the United States that are carried out and not local views -- whether those views represent local law or local prejudices. It is profoundly disturbing to learn that the Attorney General has directed the INS to foster state and local law enforcement officers' involvement in the policing of the immigration laws. This new policy can only stimulate the fears of Hispanic persons and others whose appearance is different from that of the local majority. One might have thought that the Justice Department had suffered enough self-inflicted wounds in its role as protector of civil rights, but that is apparently not the case.

Adequate support by the Executive Branch and adequate funding by Congress are the heart and soul of the matter. As we have in the past, we urge that



the funding and staffing of the INS be increased to the point where this government agency can perform its important mission of controlling immigration to the United States. We note further that to improve administration and employee morale at the long-under-funded and long-under-staffed INS, it will take better pay, better working conditions, better benefits and resolution of long-standing labor-management problems.

We insist on color-blind enforcement of the nation's law on immigration and asylum. There is a widespread perception that Haitian refugees seeking asylum in the United States have been treated in a manner different from the treatment we have accorded other refugees. We believe such differential treatment is an affront to human dignity and we call on Congress and the Administration to reject such differential treatment.

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Immigration, legal and illegal, is a complex, difficult and politically charged issue. The AFL-CIO will support you in your efforts to get action by Congress this year on comprehensive and humane immigration legislation that is consistent with the needs and goals of American workers.

I appreciate this opportunity to present some of the concerns of the AFL-CIO. Thank you.

## Statement by the AFL-CIO Executive Council

on

Immigration

February 24, 1983  
 Bal Harbour, Fla.

The AFL-CIO reaffirms its support for an immigration policy that is consistent with the nation's compassionate and humane traditions and that safeguards the welfare of American citizens and American workers.

We urge action by the 98th Congress on immigration legislation that achieves these goals. Such legislation should prevent wholesale illegal immigration but should also legalize the status of those aliens who, though their presence in the country is not authorized, have become settled, contributing members of their communities. We support the most generous, practical amnesty for these people.

Most undocumented workers come to the United States to seek jobs and are vulnerable to exploitation by unscrupulous employers because of their fear of deportation. Unable to protect themselves or to call upon government to enforce federal law on fair wages and working standards, such workers undermine the rights, the job opportunities and the working conditions of others.

The single most important deterrent to illegal immigration would be a legislative prohibition on the employment of undocumented workers. This must be accompanied by an efficient enforcement system providing for sanctions of sufficient severity against employers of undocumented workers -- including injunctions -- to deter violators, and for private legal action where the government fails to act.

Essential to workable and fair sanctions against employers is a system for verification of the identity of job applicants that will demonstrate the individual's legal entitlement to work and that is secure and forgery-proof. The legislation we seek must enable employers to ascertain in simple fashion the eligibility for employment of those they hire, and it must ensure that employers cannot use these sanctions as an excuse not to hire legal resident aliens or citizens who "look foreign."

The AFL-CIO supports a compassionate program for the legalization of undocumented workers and their families now within the U.S. Such a program must be accompanied by the adoption of a program of effective prohibition on the hiring of undocumented workers and by the appropriation of sufficient moneys to strengthen border control and interior enforcement of the immigration laws.

The AFL-CIO continues to oppose any program which would permit importing of foreign labor to undercut U.S. wages and working conditions. "Guestworker" or "bracero" programs are contrary to the interests of American workers, whatever label may be given them. We continue to support the recommendations of the Select Commission on Immigration and Refugee Policy that the government, employers and unions should cooperate to end dependence of any industry on a constant supply of temporary foreign workers, to remove current disincentives to hiring U.S. workers, and to maintain labor certification by the U.S. Department of Labor.

Any new immigration legislation must maintain and increase the authority and responsibility of the Secretary of Labor to determine in advance that admission of foreign workers will not adversely affect job opportunities, wages, hours, or other conditions of employment for U.S. workers. The AFL-CIO will continue to press these and other labor protections along lines endorsed in 1982 by the House Education and Labor Committee.

Three immigration programs under present law have an adverse impact on American workers: H-1 visas, intended for persons of distinguished merit and ability coming to perform work requiring those qualities; H-2 visas, for persons coming to perform temporary work for which qualified American workers are not available; and B-1 visas, for business visitors. All three have been used improperly by agencies administering the visa program to admit non-immigrant aliens who do not meet the specified requirements.

The AFL-CIO urges the Congress to enact new legislation to adequately protect against unfair competition for jobs from undocumented workers. The Departments of State, Justice, and Labor should better enforce programs relating to the admission of non-immigrant alien workers into the United States.

Mr. MAZZOLI. Thank you very much, Mr. Donahue.

I will yield myself 5 minutes to begin some questions.

Everybody is for the bill, except they mean with modifications. And we reach a point of wondering if these modifications can ever be made and adjusted so that everybody feels basically that they have something to stand with here.

Because, if we cannot reach that kind of posture, the posture of the real world around here, we will not get a bill. We saw it just as recently as yesterday on the social security bill. Nobody thought that was great except everybody realizes you have to take and you have to give.

My real fear here, as we waltz around the mulberry bush, is we are going to reach a point, as we reached last Congress, in which nobody is able to say unequivocally he or she is for the bill.

The equivocal statement of support is practically the kiss of death. I appreciate what you have put down here, and I sincerely believe that you have been aggressive in support of the bill. Mr. Kirkland called me yesterday to express his regret at not himself being here. He is very aggressively in favor of it, and very ardent for it, but when that translates into trying to pass a bill through 535 people, you don't get a bill.

If we don't get a bill, then the very people that you talk about who are now being faced with extraordinary discrimination, outright abominable treatment, are going to have that same treatment, in the future.

There is nothing to protect them. And it just seems to me that the worry that we have about discrimination, the worry that we have and will have with industry groups about the effect of an employer sanctions program, the worry that some civil liberties groups will express about identification cards and internal passports, pales, absolutely pales, in connection with what you see right today, within probably a few yards of the Capitol itself, and probably within a few miles of any home of any of us in this country.

If this committee is faced constantly with well meaning, and very thoughtful, and very honest presentations, as you have made today, all of which require major changes in the bill, we are not going to get a bill.

It is just that simple.



I don't really have any specific questions. We very deeply appreciate what you have brought forward. It is just very difficult, where despite the very best efforts of people for 2 years to draft it and 2 years prior to that on the Commission, headed by Father Hesburgh and four administrations, academic groups, and every other kind of group, to reach the point today—March 1983—there is not a single section of this bill that people can actually say we are for.

No one will say: "There are still some imperfections in it, but we are for it. What is happening today is so outrageous, reprehensible, so contrary to the spirit of America, we have to have some change. And this is the only thing we see coming down the pike soon. So we are prepared to go with it."

I expect that you could never relinquish fundamental labor principles. At some point—I won't ask you today—I would love privately to have some idea what those are.

If everything in your statement, Mr. Donahue, is fundamental to where the AFL-CIO goes with the bill, then we will not get a bill.

There are probably some people in the room here who hope that is exactly what happens. The best solution is no solution at all. We will muddle along and answer our problems that way.

But if the belief is that something is better than today's situation, then I would fervently request of you, if it is possible, to see where we go in absolute bottom-line situations.

I had long talks with Mr. Ray Denison of your organization at the end of the last Congress. I suggested then and I suggest again today, it is going to take a leap of faith, it is going to take a vision of the future in order to accept any bill that emerges from the Congress.

My time has expired. I really hope that we can get a bill, not so much because Ron Mazzoli and Al Simpson have some kind of a hold on the subject. We really don't. I think we are the first to admit we don't know everything about this subject. But we have called in the experts, you and other people, over the last 2½ years, and learned.

We have tried our best to assemble this information and to display it in a logical, humane, sensible, noncynical, compassionate way. We think we have. And yet, every group that we think has a real stake in this says: "Yes, we are for you, Ron, but \* \* \*". "We are really for you, Al, but \* \* \*."

When you reach the end of the day, our colleagues on the floor understand what is going on. They say: "Look, even your strong supporters are not with you. They write you letters and the first paragraph says we are for the Simpson-Mazzoli bill, and the next 14 pages disassemble the bill. They take it apart line by line." And then my friends say: "Ron, how can you say anybody is for your bill?"

If the bill doesn't pass, it is not because you have not tried, or the growers, or the civil libertarians, or the employers have not tried, but it is just simply that we who sit on this side of the table live in a world in which we cannot have perfection, we cannot have everything we like.

I would only suggest that unless there is some willingness to take a ride with us on that rocky road that might lead to a better situa-

tion—but a road on which we cannot tell you each and every turn—we are not going to get a bill.

Mr. DONAHUE. May I respond, Mr. Chairman?

I agree with you, it is a difficult process. I urge you on, commend you for the work that this committee and the Senate committee has done up to now. This is an area that I have been working and have been involved in for 17 years now.

The views of the federation, the views of everybody who has dealt with this matter in those 17 years have changed very substantially. I am not surprised that as we get close to a piece of legislation that there are suggestions for trimming, modification, some change.

I don't think you should be discouraged by that. I think you should press on once more into the breach.

Mr. MAZZOLI. I am not getting anything out of this. You all are.

Mr. DONAHUE. I think you are getting——

Mr. MAZZOLI. What am I getting out of it?

Mr. DONAHUE. I think you are fulfilling your function, sir. I don't mean to argue the point. I simply mean to commend you for your efforts, to ask your persistence in the effort. We don't find it surprising that a bill of this magnitude, addressing this problem after 15 years, takes more than 2 years to accomplish.

Let me just say our concern has to be that we are up here fairly often on matters that we think were not quite perfect when they were done and, therefore, ought to be amended. And that is a rather thankless and another long-range project.

If we are looking at a 17-year wait for modifications of a bill which might be passed, that is a long way to look forward to. So, if we make a mistake, we live with it a long time.

Mr. MAZZOLI. I don't want to, for fear of not being able to handle it. If I look at last year's testimony, it is probably less critical than today's.

Mr. DONAHUE. I would doubt that, frankly.

Mr. MAZZOLI. I thank you very much. We are sure going to keep on trying.

The gentleman from Texas is recognized for 10 minutes.

Mr. HALL. I don't know whether to laugh or cry after your statement.

Mr. MAZZOLI. I hope you do neither. I hope you have some good questions, since I didn't.

Mr. HALL. Mr. Donahue, I notice on page 8, and I certainly agree, we must have better border patrol in trying to help solve this problem. I notice some testimony from someone here that we used last year, that there is absolutely no control of the border between Mexico and the United States.

I use that because, primarily, I am thinking about the undocumented alien from that part of the country, as it affects my part of the country, that I represent, Texas.

We have made efforts to get more people on the border. We have done everything we could. I think we appropriated the money, but the White House, both the last two administrations, have not seen fit to follow through on that, which I think is a very bad indictment, more or less, of what they have failed to do.

Now, I don't know whether we are going to get more control of our borders or not. This committee made a trip down to that part of the United States last year, and all the people that we talked with said that employer sanctions is the secret to stopping people from coming into this country. I don't think they are coming over here to become citizens, I think they come over here from an economic standpoint, to make some money and send some of it back to their families at the end of the week.

We have no telling how many of these people are in the United States. I don't think anybody knows. I have heard from 3 million to 12 million. I think it is more than the smaller number, and maybe less than the larger number mentioned.

They are all over the country. They are embedded in our society. Yet, you state that you don't believe that the Federal Government has any business using State and local law enforcement officers in the policing of immigration laws.

It appears to me that just the opposite should be true. And your reasoning is that it can only stimulate the fears of Hispanic persons and others whose appearance is different from that of the local majority.

It appears to me if you have any type of enforcement, which we are all seeking—whether you have some objections to a portion of this bill or not—we are seeking the enforcement of what we pass here, assuming we pass a bill.

And I think we will. What is wrong with the Federal Government getting the help and assistance of local law enforcement officers to try to ferret out these people? I think the Federals would have just as much trouble as a local enforcement officer, knowing whether a person is or is not Hispanic.

What is the problem with getting local people to help in the enforcement, of the policing, using your language—the policing of the immigration laws?

Mr. DONAHUE. The problem, Mr. Hall, arises in an administration which is trying to deal off Federal responsibilities to State and local governments.

It arises because there is a tide running in this Nation which says the Federal Government won't do anything, give it all back to the States and they can take care of these matters.

And if we are to support that, then we will watch the continuing diminution of the Federal responsibility for immigration law enforcement. That is what is wrong with it.

If you pose for me a fully funded Immigration and Naturalization Service, effective border patrol, employer sanctions, you pass the law, and then we fully fund and establish an effective INS, and then you ask me thereafter if there is any objection to having local enforcement assistance, no, I don't object. I object to the substitution which is inherent in this discussion by the administration's Attorney General. It is the substitution issue.

Mr. HALL. If you had everything else in the bill you wanted, would you fight this bill because that one provision is in here?

Mr. DONAHUE. I suspect those are judgments we would make at the time. I think that if the effect of the bill was to vacate a Federal responsibility, I would oppose the bill.



Mr. HALL. I am not talking about that. I would not want to see the Federal responsibility vacated. I don't think that is in this bill. I don't think that is ever intended to be here.

Certainly, that is not my intention. But in looking at the area of the country where I live, and that I represent, if a group of Federal officials came in to search, to try to find people, unless they had local police involvement, they would not find a tenth of the people who are there.

I am not going to belabor this, because it is not a philosophical thing. But it just appears to me unless they have some local help in any area throughout the United States, they are going to have an impossible task of trying to police the immigration law.

My time is up. I appreciate your testimony very much.

Mr. MAZZOLI. I might say to my friend from Texas that the gentleman from Kentucky and the gentleman from California in conversation the other day with the Attorney General, suggested to him that what we read in the paper was not the way we want to see things happen, which was that local law enforcement would be used.

Obviously, if in the conduct of regular law enforcement activities, they come upon people who cannot prove who they are, then there is a need to get in touch with INS. But what we do not want to happen is that the INS deputizes local constabularies, law enforcement people, to enforce the Federal law.

We certainly don't want to inhibit local law enforcement from turning in to the INS, for whatever appropriate action is needed, people who they contact through regular law enforcement who happen to have also violated the Nation's immigration laws.

I don't think you would argue with that.

Mr. DONAHUE. No; in earlier administrations, we have supported extensive Federal grants to improve the caliber and raise the level of competence of local forces for just that purpose.

Mr. MAZZOLI. If the local law enforcement people in the routine enforcement of the law come upon someone who has also violated an immigration law, you don't feel they should be prohibited from turning that person in to the Federal authorities?

Mr. DONAHUE. Not at all.

Mr. MAZZOLI. The gentleman from California.

Mr. LUNGREN. Thank you, Mr. Chairman. At the outset, I apologize for missing your testimony.

I appreciate your testimony. There are a number of things that I readily accept and appreciate. One part of your testimony talks about identity verification, talking about the need for one that is secure and forgery proof as possible.

I think that is absolutely true. I hope you will help us in that regard. Because immediately once talks begin about some sort of secure identification, we have the horrors presented of a national identity card. I know your organization doesn't support that, nor do we.

There is a misapprehension developed that if you have some sort of identification, it is merely used on one occasion, when you seek employment, that comes to a level of a national identity card.

Your organization can be very, very helpful in disabusing people of that concept. Because I believe, as you do, unless we have a

secure, readily and easily usable identification system, the whole thing on employer sanctions and frankly, the whole bill falls.

So that would be very helpful.

On your comments about not having the local law enforcement take care of the responsibility, I agree with you. I have a concern that in my area of the country, many of the local law enforcement agencies have made it a policy not to expose people who are here illegally, if they have that information, for fear that the large numbers that are here right now, who can be victimized because of their illegal status, will fear going to local law enforcement if they are subject to crimes.

I think that is a concern we ought to have, and one that is a particular concern of the Hispanic community. We do have some difference of opinion, however, as I am sure you are well aware.

One large one is in the area of an H-2 or guest worker program. I would just like to explore the thinking of your organization on that.

Your comments seem to suggest that if we have an H-2 program, that is as workable as I would think is necessary, and as we sought to try to achieve in the last bill, although I don't think we fully achieved it, that if we don't have that type of a program, and that we stem the tide of illegal aliens coming into the United States, then American workers will quickly fill the jobs in the agricultural industry that are now taken by those who are here illegally.

If you are mistaken in that, at least based on everything I could find, because of the large presence of illegal aliens in the work force in agriculture in major portions of this country, the agricultural sector will be hard-pressed to continue.

Wouldn't you think with those assumptions that it would be prudent for us to establish a system which would give us, the U.S. Government, some control over total numbers, but allow for an available work force for those areas of our economy that for innumerable reasons have supplied a rather large pool of labor for 100 years?

Mr. DONAHUE. Mr. Lungren, I don't believe the arguments advanced that American workers won't do this work, or won't do any work that is available for them. I think the pictures I keep seeing in the press of 3,000 people lining up for 100 job applications substantiates that view.

There have been no documented studies that produce the evidence that American workers won't take jobs, or take any kind of jobs. Dishes were washed in this country and vegetables were picked long before we had an illegal immigrant problem.

They were done in your childhood and in mine, and they were done long before that by American workers, for whom the pay offered or the conditions offered were superior to some others or were the only ones available, and therefore, they took the work.

I don't think there is any argument about that having been the fact all of those years. We are now a nation in which you could measure the number of unemployed as only about a third larger than whatever the number Mr. Hall would accept on the total number of illegal aliens in this country—12 to 15 million unemployed, I don't know how many illegal aliens it is.



I don't think that the solution to our problem of worker exploitation and American worker unemployment is by providing for a bracero program.

We did it before. We have been down that road. It didn't work, and we stopped it. There is a provision for an H-2 program. We are not arguing at this point—we would prefer to see the H-2 be done away with.

That may be an impractical suggestion. We are suggesting if there be a continuance of the H-2 program, there be a codification of a workable system under which agricultural producers would seek qualified workers at least 80 days before the need arises.

Mr. LUNGREN. Basically present practice is codified, which by every estimate has not worked in the southwestern portion of the United States.

Mr. DONAHUE. The problem always is the demonstration of the failure of a system to work comes from the conduct of people who don't want the system to work. You can go on proving forever that a system doesn't work if you don't want it to. There is equal evidence—Secretary Marshall, when he was Secretary of Labor, had had particular experience with this problem in Texas and provided lots of anecdotal material, not, I submit, raised to the level of a research project, of evidencing the ability to deal with these problems, and to attract American workers to them by changing the work styles, by changing the job search methods and so forth.

Mr. MAZZOLI. The gentlemen's time has expired.

The gentleman from Florida is recognized for 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. Donahue, I certainly agree with a number of the items that are in your testimony as they were previously, and as these points have been raised over the years, because of the inability to come to some final determination at least on a temporary basis.

And I think one of the things you pointed out was you have been doing this for so many years. But you also know that the legislative process is ongoing, and what is in cement today winds up to be in mush tomorrow.

And I think to some degree what the chairman said really has to be taken with a large degree of smile and to some degree of acceptance.

I live in a county where labor happens to be rather strong and have enjoyed labor support. And I support a lot of things that organized labor in the United States is striving to obtain and to keep.

By the same token, I live in a State where agriculture is rather important, and certain accommodations have to be made unfortunately on both sides. When you take that and escalate it to a nationwide situation, everybody is going to have to give a little to get a little.

I think 17 years, Mr. Donahue, is probably a long enough period of time where some fruits should begin to be realized from your labors. I think the chairman's remarks should be kept in mind.

Everybody is going to have to be a little less strident in their opposition to certain things, and a little bit more able to facilitate solutions.

I am curious about a couple of things in your statement. For instance, on page 5, you say that for people who are applying for



jobs, but not hired for a job within a designated period prior to the time the job is filled, the record must be made available to law enforcement agencies.

On what basis, for what reason? If they come in and request it or if there is a subpoena issue for it? I get a little nervous when people's names and addresses are submitted to a law enforcement agency, if the law enforcement agency asks for it without any grounds.

You haven't related the situation under which people's names and addresses would be given to law enforcement agencies.

Mr. DONAHUE. I think your criticism is well taken, Mr. Smith.

Mr. SMITH. You might have a very valid reason. But it is kind of naked in the testimony.

Mr. DONAHUE. The reference is to keeping a record of names and addresses of persons who apply for employment, so that it would be available in the event of a discrimination charge. It would be the employer's defense against a charge of discriminatory conduct that he could then demonstrate by making available to the law enforcement agency the list of persons whom he had, who had applied—the list from which he had hired during that, whatever that is, 30-, 60-, or 90-day period.

Mr. SMITH. If it is a discrimination charge, which might be a civil rather than criminal matter, you are talking about a situation where you are mandating that an employer keep records on a civil matter which the Government might not have any interest in.

Mr. DONAHUE. We suggested that the individual who felt himself or herself discriminated against would be able to have a private right of action through the administrative processes of the bill, and at that point in a hearing before an ALJ would have a record of employment applications to submit as evidence.

Mr. SMITH. OK.

Also, you have said that although you are not particularly in love with the H-2 and H-1 programs, you understand the necessity for them—not willing to go further—and would like to codify what is already in existing law.

At this moment, there are some situations in terms of H-2 programs, even in the State of Florida, that have some difficulty in terms of housing and other things. Are you willing, when you look at codification, to at least be sensitive to what may be impossible to accomplish if you codify it. To some degree, there is a little bit of stretching that may be available, so, in the short term, anyway, as I said, what is locked in cement may not ultimately be cement—in the short term. You would have the flexibility to go in in the future. You are probably going to have to continue this fight for the next 17 years. Are you willing to look in terms of codification, but on a basis that is reasonable to everyone, not only your terms, but in the terms of what is necessary in various places around the United States?

And looking at this panel, you have the gentleman from Texas and the gentleman from California, and someone from Florida, whose areas are rather heavily affected, in California and Texas, undocumented workers, in Florida more illegal aliens.

And there are the problems we are talking about.

Mr. DONAHUE. Mr. Denison just commented to me he believes the provisions you refer to are in the——

Mr. DENISON. May I just respond to that? We are not locked in in terms of supporting the Miller amendments. We commend them to the committee to study, and while they do go beyond codification, we think they raise important concerns in terms of worker housing and protection.

But we also get into the Farm Labor Contract Act as well, where we are dealing with American migratory workers and protections accorded them in the course of their work. It is our feeling if you are going to have foreign nationals working in these areas, certainly they should be given no less protection in terms of housing and health conditions as other migratory workers receive.

Mr. SMITH. Mr. Chairman—Mr. Donahue raised a point I would like to get to.

You raise the issue of what happened in the past in this country where there was a lot of people doing jobs which some people say today are mainly below the American workers' level—they won't pick it up: Agricultural work, washing dishes, and so forth.

The one problem I think that is now inside the United States that didn't appear at that time was that the large numbers of unemployed, and I think you understand this, don't match geographically the larger areas where worker need is.

And I would like to find out from you, not necessarily today, but if there is some kind of a program, and I would like to see American unemployed workers employed in these open jobs—that would get those unemployed American workers, for instance, from Detroit or somewhere else, to the places on the coasts, and in the other areas of agriculture, because Detroit at this moment is not known for agriculture. We have got to do something about that.

I think that is one of the answers that may be ultimately a key to some of the other facilitations.

Mr. DONAHUE. We have addressed that issue in terms of temporary jobs legislation, and have talked about the need for retraining and relocation on a fairly broad scale, so that workers can be—their movement can be facilitated from the area where there is no employment to the area where there is some.

Mr. SMITH. When they are standing on breadlines they don't have the dollars to get on a bus and go to California.

Mr. DONAHUE. Under an H-2 program, the employer is willing to pay to bring them in from Trinidad, Jamaica, wherever. We have addressed the issue in our testimony on jobs and continually have argued in favor of relocation allowances and a system which would provide for a national employment service which could effectively move or suggest the movement of workers from one area of the country to another.

Mr. MAZZOLI. The gentlemen's time has expired. For a freshman member of this committee, the gentleman has asked some very insightful questions. Thank you.

I would mention, Mr. Donahue, just in some very brief readings I have done over the last few days, I think a lot of organizations and groups and so-called think tanks among them have suggested that indeed there is going to have to be some kind of contact between the United States and Mexico, and other nations in this Hemi-



sphere and in the Caribbean Basin. That is going to take some tough decisions. I know labor opposed the Caribbean Basin Initiative last year, and of course, you suffered a very significant loss.

The majority of the members of the House feel there has to be some willingness to make a change in the past in order to fulfill our responsibilities to this Hemisphere. As the gentleman from Florida and others have suggested, if we don't do something different and be willing to make again the sort of leap of faith so that the future will be better than the past, we are going to condemn ourselves to have the one export they do have in abundance—human beings.

The academic groups—Brookings Institution, the University of California at Berkeley—have suggested there needs to be some kind of foreign labor program. As the gentleman from Florida has very insightfully brought up, it is tough to get a guy to move from Bangor, Maine to Fresno. His roots are in Bangor, Maine.

He is a French-American. He is not a Californian.

All of the enticement in the world, all of the pay may not get him out there. There is traditionally migrant labor, either U.S. citizen or non-U.S. citizen, willing to go with the sun, to follow mother nature's time clock.

We have got to somehow recognize that as a fact of life. What we do with it, whether we enhance the H-2 program, whether we get into some kind of a cooperative contact between the United States and Mexico with regard to solutions, including this idea of some kind of a controlled worker program, we can't ignore it.

But I really feel much as the gentleman has that this is a sociological fact in America. People just are not willing to suddenly move. They are hardly willing to go from city to city within Florida, much less from State to State or region to region.

It is something we have to investigate.

Mr. DONAHUE. I think that the unions particularly were successful in recruiting all of the workers that were needed on the Alaskan pipeline, and they all came from the lower 48. But they came for the attractive jobs which were offered there.

I think there is a continuing migration South in this country. Houston is receiving a couple of thousand people every week.

Mr. MAZZOLI. I have been reading the stories. They are coming back to Detroit from Houston. They are not comfortable in Houston. They are comfortable in Detroit.

Mr. DONAHUE. I am a New Yorker who has only been here for 20 years. I migrated.

Mr. MAZZOLI. I agree. It is true. I guess if you said to people, we will give you \$20 an hour to pick grapes, maybe some would go out from Bangor, Maine. But I just wonder how long they would stay.

Of course, the Alaskan pipeline was a private job, so many years and that is it. Where you pick grapes year in and year out, it is a little different than building a structure.

Anyway, it has been an interesting conversation.

Mr. DONAHUE. Mr. Chairman, may I just comment, clarify for the record your comments on the Caribbean Basin Initiative? We fully supported the aid provisions of the Caribbean Basin Initiative. We opposed the tax incentive provisions of the CBI, because we think it would encourage the runaway employer who is already



running away at a large rate, and CBI would give him greater encouragement, and that it was contradictory to the effort to provide tax incentives for U.S. employers to invest in the United States and therefore, self-defeating.

We fully supported the aid provisions and we would support aid provisions which would lead to job creation.

Mr. MAZZOLI. Academicians suggest that aid programs are not enough and never will be. That unless you get into something like changes in the tariffs, encouraging imports, reducing tariff barriers, unless you get into some of those areas which are really sensitive, you are not going to solve the problems.

Thank you all very much.

Mr. DONAHUE. Thank you, Mr. Chairman.

Mr. MAZZOLI. At this time we will call the next panel.

Gentlemen, I appreciate very much your coming. Many of you have been our frequent guests in the past. We thank you.

Let me start with Mr. Ellsworth, of the National Council of Agricultural Employers.

**TESTIMONY OF PERRY E. ELLSWORTH, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS; RUSSELL R. WILLIAMS, PRESIDENT, AGRICULTURAL PRODUCERS, INC.; HENRY J. VOSS, MEMBER OF EXECUTIVE COMMITTEE, AMERICAN FARM BUREAU; TOM HALE, PRESIDENT, CALIFORNIA GRAPE AND TREE FRUIT LEAGUE; GEORGE SORN, ASSISTANT GENERAL MANAGER, FLORIDA FRUIT & VEGETABLE ASSOCIATION; JOHN R. NORTON III, CHAIRMAN OF THE BOARD, UNITED FRESH FRUIT & VEGETABLE ASSOCIATION; R. E. HORNIBROOK, CHAIRMAN, LABOR COMMITTEE, NATIONAL CATTLEMEN'S ASSOCIATION, AND FRATES SEELIGSON, PRESIDENT, TEXAS & SOUTHWESTERN CATTLE RAISERS ASSOCIATION**

Mr. ELLSWORTH. Thank you very much, Mr. Chairman. We appreciate the opportunity to be here today.

You remarked about the number of changes coming up in this bill. I think I can give you a good answer to that, and that is, about 2 years ago nobody thought the legislation had any chance and all of a sudden that scene has changed.

We are very concerned over the effect that employer sanctions may have upon the ability of this Nation's farmers to produce food and fiber. It is no secret that there are undocumented agricultural workers employed in agriculture, and that such workers, while more prevalent in some areas, work in nearly every State. We know that some of them live there year-round to do their work. We know that others come into this country and return to their own country which they have no intention of abandoning.

No one knows how many are eligible for amnesty under the provisions of H.R. 1510, how many who are eligible will apply for amnesty, and what employment such workers will seek once granted amnesty. But even without statistics or experience as guides, it is safe to assume if H.R. 1510 becomes law the agricultural work force will be reduced.

NCAE stated at numerous hearings and in written statements submitted for sessions of the Select Commission on Immigration

and Refugee Policy, and before this subcommittee and other congressional committees, that agricultural employers are not opposed to the imposition of agricultural sanctions provided a rapid and reliable system exists for the identification of legal workers and provided provision is made whereby employers can, if a demonstrated need exists, obtain supplemental agricultural workers from outside the country.

Contrary to allegations made by others, agricultural employers would greatly prefer to hire U.S. citizens and legal residents. The cost of doing so, which we have documented many times, is considerably less than participating in the supplemental worker program.

Assuming for the moment that requests for supplemental agricultural workers could be processed by the Department of Labor, and we don't know, under the H-2 program, whether it can or cannot because again we don't know how many numbers are involved; the regulations of the H-2 program require that such workers be furnished free housing.

Rightly or wrongly, there is insufficient approved housing in many parts of the country and it would be virtually impossible, both fiscally and timewise, for agricultural employers to construct such housing.

There is another complication—zoning laws. One community, in particular, upon learning that an employer intended to build a labor camp, met in extra session and changed its zoning rules.

We suggest that in order to provide a rapid method of being sure of the identification of a worker as legal, that the social security card be converted to a counterfeit-resistant document probably with a picture on it that would require periodic updating. But that seems to us to be a card which everyone has anyway, and it therefore is not adding another card.

We continue our strong support for the so-called H-2 program and urge its retention in H.R. 1510. Experience has shown that the program works well to enable agricultural employers with a labor shortfall to obtain needed workers. There are, however, agricultural employers who urge that the committee give careful thought to the inclusion in H.R. 1510 of a complementary open market labor concept in addition to the H-2 program, and you will hear from others about that.

As an alternative, NCAE suggests that the subcommittee consider a transition proposal developed by the agricultural employment work group funded by the U.S. Department of Agriculture. That group was comprised of worker representatives, employers, employer representatives, and academics. Its report is entitled "Alien Workers in American Agriculture: An Analysis and Recommendations."

Mr. MAZZOLI. Sorry, Mr. Ellsworth, your time has expired. Maybe you can summarize the remainder of your points.

Mr. ELLSWORTH. I would like to call attention to the middle paragraph on page 4, the last three lines, the large paragraph. It says NCAE urges that the 8-month stay provision be deleted and that the Secretary of Labor be given authority to determine such periods. That is a typographical error. I intended that to read that the Immigration and Naturalization Service be given this authority as it now has.

We suggest modifications to the provision regarding denial of certification in a strike situation—and that is in here. And last but not least, we believe that any employer who has been denied certification must have a rapid system of appealing that decision, and we urge that it be de novo, starting from the beginning again, all facts laid on the table.

Mr. MAZZOLI. Mr. Ellsworth, this definition of strike, is that the same one we heard yesterday from the California Chamber of Commerce? I believe it is.

Mr. ELLSWORTH. I might say, sir, since the end of the last Congress and up until now, agricultural people have been working and giving days and days of thought and consideration to this. So you will find some degree of similarity in what is being said, but not complete.

Mr. MAZZOLI. It is good if there is. It gives us something to analyze and collate.

[The complete statement follows:]



STATEMENT  
of  
NATIONAL COUNCIL OF AGRICULTURAL EMPLOYERS  
before the  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW  
of the  
HOUSE COMMITTEE ON THE JUDICIARY  
regarding  
H.R.1510  
THE IMMIGRATION REFORM AND CONTROL ACT OF 1983  
by  
PERRY R. ELLSWORTH, EXECUTIVE VICE PRESIDENT  
March 10, 1983

The National Council of Agricultural Employers is a voluntary membership organization whose members hire an estimated seventy five percent (75%) of the seasonal agricultural workers employed in this country.

NCAE supports, in general, efforts to control the flow of illegal persons into this country. It is very concerned, however, over the effect that employer sanctions may have upon the ability of this nation's farmers to produce food and fiber.

It is no secret that there are undocumented agricultural workers employed in agriculture and that such workers, while more prevalent in some areas, work in nearly every State. Many undocumented agricultural workers live in this country year 'round. Others come to this country when agricultural employment is available, then return to their home countries which they have no intention of abandoning.

No one knows how many of the undocumented agricultural workers are eligible for amnesty under the provisions of H.R.1510, how many who are eligible will apply for amnesty, and what employment such workers will seek once granted amnesty. Even without statistics or experience as guides, it is safe to assume that if H.R.1510 becomes law, the agricultural work force will be reduced.

History has demonstrated that there are not now enough legal agricultural workers to fill the need, and that there is a reluctance on the part of many who might perform agricultural work to accept and continue such employment in preference to other methods of meeting their financial needs.

NCAE has stated, at numerous hearings and in written statements submitted for sessions of the Select Commission on Immigration and Refugee Policy and at hearings on this legislation held during the 97th Congress, that agricultural employers are not opposed to the imposition of employer sanctions provided a rapid and reliable method exists for the identification of legal workers, and provided provision is made whereby employers can, if a demonstrated need exists, obtain supplemental agricultural workers from outside this country. NCAE supported, in large measure, the findings of the Select Commission on Immigration and Refugee Policy which stated, in part:

"The Department of Labor should recommend changes in the H-2 program which would improve the fairness of the program to both U.S. workers and employers."

NCAE's position remains unchanged.

Contrary to allegations made by others, agricultural employers would greatly prefer to hire U.S. citizens and legal residents. The cost of doing so is considerably less than participating in a supplemental worker program. There is no disruption of a legal work force by the Immigration and Naturalization Service.

On the other hand, farmers, unlike non-agricultural employers, must have sufficient numbers of reliable and able workers when crops are ready for harvest. Mother Nature has not seen fit to adjust her schedule to accommodate a labor shortage.

Agricultural employers and their associations have spent countless hours studying the problem and seeking ways in which they can continue to operate under employer sanctions. They have, of necessity, viewed the problem from a worst possible scenario point of view. Assuming a total of 300,000 undocumented workers currently employed in agriculture (and that figure may be too large or too small), and assuming that many, if not most of those workers will be ineligible for amnesty or will seek non-agricultural work once granted amnesty, there is the very real likelihood that the U.S. Department of Labor could not process the requests for needed supplemental workers.

Assuming, for the moment, that the requests for supplemental agricultural workers could be processed by the Department of Labor, current regulations require that such workers be furnished free housing. Rightly or wrongly, there is insufficient

approved housing in many parts of the country and it would be virtually impossible, both fiscally and time-wise, for agricultural employers to construct such housing. There is another complication---zoning laws. One community council recently met in extra session to change its zoning law upon learning that an employer had requested a permit to build such housing.

In order to provide a rapid and reliable method of identifying legal workers, NCAE urges the Committee to include in H.R.1510 a requirement that a non-counterfeitable Social Security card be developed and issued as rapidly as possible to all persons. This card would be easily carried. Every person seeking employment now must have such a card, so the new one would be a replacement, not a work permit. If a photograph were included, and NCAE thinks it should be, the card could be up-dated, perhaps every ten years.

NCAE continues its strong support for the so-called H-2 program and urges its retention in H.R.1510. Experience has shown that the program works well to enable agricultural employers with a labor shortfall to obtain needed workers. There are, however, agricultural employers who urge that the Committee give careful thought to the inclusion, in H.R.1510 of a complementary open market labor concept in addition to the H-2 program. Such a concept would provide that, pursuant to verification of need, employers unable to meet the requirements of the H-2 program could obtain agricultural workers from outside the United States to fill their labor shortfall.

Such a program, they state, would provide a workable mechanism for areas where large numbers of undocumented workers have been employed. NCAE understands that this proposal will be in bill form soon.

It will not be difficult for an employer who has utilized a very small number of undocumented workers to make the transition to persons who are U.S. citizens or temporary or permanent resident aliens authorized to seek employment. On the other hand, an agricultural employer who has been using a work force comprised of mostly undocumented workers will face an almost insurmountable challenge if required to convert, overnight, to all legal workers.

As an alternative, NCAE suggests that the Subcommittee consider a transition proposal



developed by the Agricultural Employment Work Group, funded by the U.S. Department of Agriculture. The Work Group was comprised of worker representatives, employers and employer representatives, and academics. Its report is entitled "Alien Workers in American Agriculture: Analysis and Recommendations."

Turning now to Section 211 of H.R.1510, NCAE favors the provision that agricultural employers need not apply for certification for temporary foreign agricultural workers more than 50 days in advance of the date of need. Requiring such action farther in advance of date of need can result in estimates rather than recognized labor requirements.

Enactment of the Immigration Reform and Control Act of 1983 will bring about changes of unknown magnitude and scope, especially in agriculture. The Federal government must be able to respond to agricultural employers' needs for labor in a manner which assures the continued production of food and fiber. Fixing the stay of temporary foreign agricultural workers by law to not more than eight (8) months in any calendar year is, at best, an arbitrary decision. There is no basis in fact for the selection of that time limit. Setting any time limit based on experience to date is extremely dangerous when no one knows with certainty how many employers will need how many workers for how long. NCAE urges that the eight (8) month stay provision be deleted and that the Secretary of Labor be given authority to determine such periods, based on facts and needs as this legislation becomes fully effective.

NCAE agrees that an employer who violates the terms of the H-2 program should be taken to task in some manner. Denial of certification for up to three years seems, however, to be a severe penalty when one considers that such action could put a farmer out of business. NCAE urges that the period be reduced to no more than one year or that fines be imposed in lieu of denial.

A key provision in this legislation is the definition of "strike." Present language promulgated in Immigration and Naturalization Service regulations (8 C.F.R. 214.2(h)(10)) provides that:

A petition shall be denied if a strike or other labor dispute involving a work stoppage or layoff of employees is in progress in the occupation and at the place the beneficiary is to be employed or trained; if the petition has already been approved, the approval of the beneficiary's employment or training is automatically suspended while such strike or other labor dispute is in progress.

The above language, coupled with the Labor Department's interpretation that a strike or labor dispute exists if two or more workers act in concert, can prove devastating to an agricultural employer at the height of harvest.

NCAE urges adoption of the following language to define an agricultural labor dispute:

A labor dispute shall be deemed to exist at any job site when 50 percent or more of the bona fide agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions. Such labor dispute shall be deemed to have terminated when less than 50 percent of the agricultural employees of the employer remain on strike, but in no case shall the labor dispute survive the term of employment. A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met. Upon application of any interested party, the Secretary of Labor shall, within 3 days where possible, but not more than 5 days in any case, conduct a hearing to determine whether a labor dispute exists or whether a labor dispute has terminated, and the number of workers affected thereby.

NCAE strongly endorses the provision for an expedited review of denials of certification, and urges that provision be made for a de novo administrative hearing at an applicant's request. It is not uncommon for a crew earlier referred to an agricultural employer, to notify the employer that it will not report on the date of need, as agreed. In one instance, a crew leader's widow telephoned one employer to say that her husband had died (heart attack) and the crew had been disbanded. In such circumstances, the Labor Department should consider, de novo, the employer's earlier request for certification. To do less would leave the employer in a helpless situation for needed labor.

No program such as that provided in H.R.1510 can be successfully operated if a State or States enact differing legislation. To prevent such a highly undesirable possibility, NCAE asks that language be added to H.R.1510 which makes it clear that the provisions of Section 211 preempt any State or local law regulating the admission of non-immigrant workers.

Last, but by no means least, NCAE urges that language be included in H.R.1510 to provide that the Attorney General, in consultation with the Secretary of Labor, and, in connection with agricultural labor or services, the Secretary of Agriculture, shall approve all regulations to be issued implementing the amendments made by Section 211. The need for agricultural labor in sufficient numbers and at specified times is crucial to this country's production of food and fiber. The Select Commission on Immigration and Refugee Policy recommended that there should be changes in the H-2 program to improve its fairness to both workers and employers. NCAE strongly maintains that there are two "societies" involved—workers and employers. Just as the Secretary of Labor has concern for workers, the Secretary of Agriculture is concerned with the production of food and fiber. The latter individual's views are essential where the H-2 program or any other agricultural worker program is under discussion. The Attorney General, charged with responsibility for the admission of persons into the country, has an obvious interest and can serve, should the need arise, as a disinterested mediator. Working together, the three can produce equitable regulations to implement the law applying to this important segment of our economy.

Mr. MAZZOLI. Mr. Hale, you are recognized for 5 minutes.

Mr. HALE. Thank you, Mr. Chairman.

It is the position of the league that there needs to be an integrated approach to dealing with the problem of illegal immigration into this country, a program that allows those who have resided in the United States for some time to remain under a legal status; that allows modification of the existing program to admit, under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, agricultural and nonagricultural foreign works to perform temporary services or labor, and that also provides for a more flexible foreign worker program that meets the needs of agricultural employers who produce highly seasonal labor-intensive perishable crops.

From the agricultural perspective, the key element to the success or failure of the immigration policy is the implementation of a workable program to admit alien workers to the United States on a seasonal basis.

According to Leonel Castillo, former Commissioner of the U.S. Immigration and Naturalization Service:

The United States is experiencing the world's largest temporary worker program, larger even than the guest worker programs of Switzerland, France, Holland, and Germany. Only ours is unregulated, resulting in the Immigration Service having to arrest over a million persons annually, whose crime is that they want to work in this country.

Economic factors will continue to propel immigrants to the United States within a legal program, if available, and illegally if not. Any program for dealing with immigration must take into consideration the tremendous drawing power of the United States. The Select Commission on Immigration and Refugee Policy pointed out that all studies indicate that undocumented/illegal aliens are attracted to this country by U.S. employment opportunities. Most



come from countries that have high rates of under- and unemployment.

As was pointed out by Carey McWilliams, in the book "North from Mexico":

The issue has always turned on the choice between planned migration and unplanned immigration, for it is extremely debatable whether, under any circumstances, Mexican workers can be kept from crossing the border. Given the attraction of industrial employment in the United States and the ease with which the border can be crossed, Mexicans will continue to follow the old familiar paths which lead north from Mexico.

Any immigration policy must recognize these natural forces when attempting to balance reasonable controls against the need for foreign workers in the U.S. economy. The correct equation to be reached is one that allows just enough legal use of nonimmigrant aliens to meet the bona fide need of U.S. producers for foreign workers.

A program that is too relaxed will have no effect on stemming the flow of undocumented workers, with attendant abuses of employers and employees, while one too restrictive will work to drive the flow further underground, with attendant abuses of employers and employees. Neither is satisfactory. We must be cognizant of the fact that a supplemental foreign agricultural and nonagricultural work force will continue to be needed in several industries.

The league believes that the needed agricultural work force can be provided by a modified H-2 program and a complementary seasonal foreign worker program. The modifications to section 211 of H.R. 1520, H-2, have been described by others and will be described by others on this panel. We are in full agreement with those recommended changes.

These corrections, together with an adequate statutory foundation that the H-2 program is to be liberally construed to allow for a continuing viable flow of foreign workers, is essential. However, even with these modifications, considerable segments of agriculture are not well-suited for the H-2 program. Those farmers who produce highly perishable labor-intensive crops and who have a large variability in their demand for labor are ill-suited for the highly regimented inflexible H-2 system.

In order to meet the needs for labor in the production of highly perishable and/or labor-intensive crops, the league recommends adoption of a seasonal foreign worker program that provides in very brief summary for the establishment of a nonimmigrant category for seasonal foreign workers who are coming into the United States for a period not to exceed 11 consecutive months to permit agricultural labor; that the Attorney General shall establish a program for admission into the United States of these nonimmigrants.

Such program shall include the imposition of monthly and annual numerical limitations based on the number of workers identified by agricultural employers, historical employment patterns, and the availability of domestic workers.

Nonimmigrant visas shall be made available in accordance with the preference system. The nonimmigrant visas issued to any alien under this program shall not limit the type of agricultural employment to be performed or limit the alien selection of agricultural

employers. The workers will be free to work for whomever he chooses and to follow his or her traditional migratory pattern.

Agricultural employers should not be required to furnish housing that is not presently available or offered to domestic employees; and also, that is not presently required of nonagricultural employers under today's existing H-2 program.

No alien admitted for this seasonal foreign worker program should be eligible for financial assistance under any Federal program. Agricultural employers we would propose pay into a fund the employee portion of social security taxes and the federally-mandated portion of unemployment insurance tax. This sum should be returned to the alien upon his return home. It shall be retained in order to insure the alien's maintenance of the status under which he or she was admitted.

We believe that there does have to be enforcement provisions, that the employer should be responsible for not hiring H-2 workers, if he is under this program. He should also be responsible for not hiring foreign workers in order to fill a vacancy as a result of a labor dispute.

He should have a requirement to give preference to hiring domestic workers. And absent these actions by the employer, he should be penalized and not allowed to work under the program.

The league is very much in favor of the legalization process, and is supportive of that.

One final statement, Mr. Chairman.

We are not opposed to reasonable sanctions against employers who knowingly and willingly hire illegals, provided there is a guaranteed adequate work force, that there is even enforcement which includes some adjustment that will have to be made to search warrant provisions, that there is a simple, reliable means of worker identification that doesn't burden the employer to determine authenticity, and that there exist a requirement that any person or other entity that refers workers be responsible for establishing the legal status of those workers, checking identification, and maintaining records, and be subject to the same sanctions as employers.

Thank you.

[The complete statement follows:]

STATEMENT OF THE CALIFORNIA GRAPE & TREE FRUIT LEAGUE  
TO THE  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW  
OF THE  
HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY

MARCH 10, 1983

PRESENTED BY THOMAS J. HALE, PRESIDENT

The California Grape & Tree Fruit League is a voluntary membership organization that represents growers and shippers of fresh grapes, peaches, pears, plums, nectarines, cherries and other deciduous fruits that are produced in California and Arizona. The League represents about 85% of the total product grown and shipped from this area.

It is the position of the League that there needs to be an integrated approach to dealing with the problem of illegal immigration into this country -- a program that allows those who have resided in the United States for some time to remain under a legal status; that allows modification of the existing program to admit, under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act, agricultural and non-agricultural foreign workers to perform temporary services or labor; and that also provides for a more flexible foreign worker program that meets the needs of agricultural employers who produce highly seasonal-labor intensive perishable crops.



From the agricultural perspective, the key element to the success or failure of the immigration policy is the implementation of a workable program to admit alien workers to the United States on a seasonal basis.

According to Leonel Castillo, former Commissioner of the U. S. Immigration and Naturalization Service, "The U. S. is experiencing the world's largest temporary worker program, larger even than the guestworker programs of Switzerland, France, Holland and Germany. Only ours is unregulated... (resulting) in the Immigration Service having to arrest over a million persons annually...whose crime is that they want to work in this country."

Economic factors will continue to propel immigrants to the United States, within a legal program, if available (and illegally, if not). Any program for dealing with immigration must take into consideration the tremendous drawing power of the United States. The Select Commission on Immigration and Refugee Policy pointed out that all studies indicate that undocumented/illegal aliens are attracted to this country by U. S. employment opportunities. Most come from countries that have high rates of under- and unemployment. As was pointed out by Carey McWilliams, in the book North from Mexico, "The issue has always turned on the choice between planned migration and unplanned immigration, for it is extremely debatable whether, under any circumstances, Mexican workers can be kept from crossing the border. Given the attraction of industrial employment in the United States and the ease with which the border can be crossed, Mexicans will continue to follow the old familiar paths which lead north from Mexico."

Any immigration policy must recognize these natural forces when attempting to balance reasonable controls against the need for foreign workers in the U. S. economy. The correct equation to be reached is one that allows just enough legal use of non-immigrant aliens to meet the bona fide need of U. S. producers for foreign workers. A program that is too relaxed will have no effect on stemming the flow of undocumented workers, while one too restrictive will work to drive the flow further underground, with attendant abuses of employers and employees. Neither is satisfactory. We must be cognizant of the fact that a supplemental foreign agricultural and non-agricultural workforce will continue to be needed in several industries.

#### THE H-2 PROGRAM

H.R.1510 attempts to provide a program to admit aliens to perform services or labor, under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act. There is a separate treatment for agricultural and non-agricultural labor, of which we are supportive. For agricultural employment, the provisions fall short of what is needed in the following respects:

1. A workable definition of "labor dispute" should be included. Under the present definition of the Department of Labor and the Immigration and Naturalization Service, any two or more persons at a jobsite can create a labor dispute, thereby foreclosing an employer from being certified from participating in the H-2 program. We instead propose that a labor dispute be deemed to exist when, "at any jobsite, 50% or more of the bona fide agricultural employees of an employer, without coercion,

are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions." A labor dispute should be deemed to have terminated when less than the 50% identified above remain on strike, but in no case longer than the employee's term of employment. The use of H-2 workers should only be barred on jobs specifically vacant as a result of the labor dispute.

2. The Attorney General needs to be given the main authority for promulgating regulations, consulting with the Secretary of Agriculture and Secretary of Labor on an equal level. The Attorney General is charged with the responsibility of admitting aliens into the United States, and is in a more objective position to promulgate reasonable regulations than either DOL or USDA.
3. The adverse effect wage rate should be disallowed as a mechanism for ensuring that the wages and working conditions of U. S. workers are not affected by the admittance of foreign workers. There is no similar mechanism for non-agricultural employers using H-2 workers. In addition, the payment of federal minimum wages, state minimum wages or prevailing wage rates in the area of employment, whichever is highest, will assure no adverse effect on the wages of U. S. workers.



4. Provisions should be included to allow employers to assist workers in making housing arrangements. The requirement for agricultural employers to provide housing should be disallowed, the same as currently provided in the regulations for non-agricultural employers.

These corrections, together with an adequate statutory foundation that the H-2 program is to be liberally construed to allow for a continuing, viable flow of foreign workers, is essential.

Even with these modifications, considerable segments of agriculture are not well suited to the H-2 program. Those farmers who produce highly perishable, labor-intensive crops and who have a large variability in their demand for labor are ill-suited for the highly regimented, inflexible H-2 system. Also, those located in areas producing many crops and varieties of each crop (each with its own cultural and harvesting requirements), and in areas involving numerous producers, are similarly incapable of utilizing the H-2 program without major disruptions to production and important losses of food crops.

Consider, for example, the swelling demand for labor in the cherry industry, where labor requirements rise from a level of 4.5 man hours per acre in the month of March to a peak of 316 man hours per acre during the harvest period of May to June. This meteoric rise in the demand for labor is followed by a correspondingly dramatic drop in demand, as only about two man hours per acre are required in the month of July.

Because of the perishability of many agricultural commodities and the whims of nature, agricultural employers often do not have the option of hiring smaller crews of workers over a longer period of time. Harvest time demands immediate attention to avoid crop loss. Because many domestic workers are unwilling or unable to accept employment for such short periods of time, a supplemental seasonal workforce, usually including undocumented workers, has filled the gap. These workers have established work patterns that may involve local or regional migration; they rely on a developed intelligence system in deciding who to work for, the work to perform and the timing for seeking job opportunities. There are no legal restrictions on who to work for or when to quit; there is a regular tendency for those possessing skills to locate employers who require those skills. This all occurs without formal work orders, government involved screening and recruitment procedures, or mandated employer-employee relationships.

The League supports maintaining such a system under a legal framework -- one that is flexible and responsive to meet this need of many agricultural producers. This system would be complementary to, and not a replacement of, the H-2 program.

#### ELEMENTS OF THE SEASONAL FOREIGN WORKER PROGRAM

In order to meet the initial needs for labor in the production of highly perishable food commodities, the League recommends adoption of a seasonal foreign worker program that provides:

- ° for the establishment of a non-immigrant category for seasonal foreign workers who have no intention of abandoning their residence in a foreign country, who

are nationals of the foreign country, and who are coming to the United States for a period not to exceed 11 consecutive months to perform seasonal agricultural labor.

- ° the Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, shall by regulation establish a program for admission into the United States of these non-immigrants. Such program shall include the imposition of monthly and annual numerical limitations applicable to the issuance of non-immigrant visas, based on the number of workers identified by agricultural employers. The non-immigrant visas shall be made available in accordance with a preference system.
- ° the non-immigrant visa issued to any alien under this program shall not limit the type of agricultural employment to be performed, or limit the alien's selection of agricultural employers.
- ° the aliens admitted into the United States periodically to perform agricultural labor must be continuously employed or actively seeking employment in accordance with usual and customary employment patterns and practices.
- ° an agricultural employer who employs these non-immigrant aliens shall have the responsibility of recruiting, in the area of intended employment, willing and qualified domestic workers that will be available at the time and place needed, and shall accept for employment willing and qualified domestic agricultural workers who apply or are referred to the employer.
- ° agricultural employers shall timely petition the Attorney General for authority to employ foreign agricultural workers admitted into the United States.
- ° the Attorney General shall provide an expedited procedure for review of the petitions and statements filed by agricultural employers, and determine:
  - (a) the total numerical need for seasonal agricultural workers and the time such workers are needed,
  - (b) the estimated availability of willing and qualified domestic agricultural workers who will be available at the time and at the place needed in the area of production to perform agricultural labor,



- (c) the numerical limitations and the period of need for seasonal agricultural foreign workers, based on historical agricultural employment patterns, availability of domestic workers, and the projected labor needs of prospective agricultural employees.
- (d) a plan for admittance of aliens into the United States, in accordance with a preference for willing and qualified individuals.
- ° the Attorney General shall approve and endorse the petitions. After receipt of the endorsed petitions, the consular officer will issue non-immigrant visas to the requisite number of aliens. Such visas shall bear a special symbol, and identify the date on which the alien is to return to his/her home country.
- ° no alien admitted for this seasonal foreign worker program shall be eligible for any financial assistance under Federal law.
- ° agricultural employers of non-immigrant aliens admitted under this program shall pay the employee portion of social security taxes and the federally mandated portion of the unemployment insurance tax. Such sums shall be retained in order to ensure the alien's maintenance of the status under which he/she was admitted and his/her timely departure from the United States, and shall be paid in a lump sum to the alien if it is demonstrated that the alien has participated in the seasonal foreign worker program, has not violated any provision of the program, and has no intention of abandoning his residence in his home country. The payment shall be made only at the consulate of the United States in the labor source country which is nearest to the residence of the alien.
- ° the Attorney General may impose reasonable penalties for violations up to and including removing for a period of five years the employer's authority to employ seasonal foreign workers under this program.

Violations include any of the following acts of the employer:

- (a) employment of foreign agricultural workers under section 101(a)(15)(H)(ii).
- (b) employing a foreign agricultural worker for a job opportunity made vacant as a result of a labor dispute.
- (c) failure to hire willing and qualified domestic workers that are available at the time and at the place of need.

(d) knowingly discriminating against domestic employees.

(e) knowingly hiring illegal aliens.

° It shall be unlawful for anyone to knowingly hire, recruit or refer for employment, an alien admitted to the United States under this program unless he/she has received the proper authority. Anyone violating this provision shall be subject to civil and criminal penalties.

° the employer portion of social security taxes shall be maintained in a separate fund from which shall be paid to the Attorney General amounts to cover reasonable costs of administration and enforcement of the seasonal agricultural foreign worker program.

#### LEGALIZATION

Title III of H.R.1510 provides for adjustment of illegal alien status to that of a person admitted for temporary or permanent residence. The League is supportive of these provisions. We would, however, encourage that requirements for continuous residency necessary to qualify for legal status be based on a reasonable definition of what is "continuous." The legalization process is intended to avoid major disruption in the lives of those who have resided in the United States, and a conservative construction of what is "continuous" would defeat the intent of this provision for farmworkers, who generally return to their home country during periods of low employment.

#### EMPLOYER SANCTIONS

The League does not oppose reasonable sanctions against employers who knowingly and willfully hire illegal aliens provided:

- (a) there is guaranteed an adequate supply of foreign agricultural workers,
- (b) there is even enforcement, and safeguards to protect against selective enforcement. In this regard, we urge that the H.R.1510 bill be amended to incorporate the requirement for a properly executed search warrant prior to enforcement officials entering a farm or other agricultural operation.

- (c) there exists a simple, reliable means of worker identification that doesn't burden the employer to determine authenticity.

We appreciate the opportunity to present our views and recommendations to this Committee. We ask your careful consideration of this testimony and adoption of an immigration program described herein -- one that will provide a workable system to gain control of our national borders, as well as provide the needed seasonal foreign workforce that will enable continuous production of vital foodstuffs for this country.

Mr. MAZZOLI. I might mention the last point of yours was mentioned to us by Congressman Hank Brown of Colorado last week. It is an interesting point.

Mr. Hornibrook, the chairman of the Labor Committee of the National Cattlemen's Association.

Mr. HORNIBROOK. Thank you.

I am R. A. Hornibrook, a cattle rancher from Goldendale.

I currently serve as chairman of the National Cattlemen's Labor Committee. I appreciate the opportunity to testify before you today, representing the views of 245,000 cattle producers and feeders throughout the United States.

We acknowledge there is a serious problem with current immigration laws, and the flow of illegals into this country. However, in our opinion H.R. 1510 is perhaps enabling legislation and could be interpreted by bureaucratic people to a different category than what the intent we are working for is.

I am often reminded of OSHA and the good intent that happened in the Congress in passing the bill, and then when I ran into it, one of our hermit-type cattlemen got caught with an OSHA inspector who had never been on a farm before. I hope this doesn't raise the same controversy that happened with those.

We recognize a majority of the alien agricultural labor is associated with farming and harvesting of produce. The cattle industry also relies on the same labor force on certain occasions. Occasionally we have to go out and glean a large area of our range for certain hazardous weeds. It is awfully handy to be able to call and get 30 migrants or someone who can walk that property, get over it and get it cleaned out. And that is the type we use. We use them in our area for fencing, and sometimes the feed lots are using them as riders in the feed lot.

Our needs are a little different. We don't have time for H-2 programs. We realize we need them. Some of the H-2's are used in the feed lots as riders.

We do have a blanket problem with an easy-out answer to amnesty. We know of people who have come to this country, waited their turn and worked towards getting their naturalization, citizenship. Amnesty under these conditions we feel is granting citizenship to people who have been here in opposition to the law.



We would agree with the well-documented program of naturalization which permits the needed number of working aliens who would be gainfully employed to become citizens and providing they meet the same requirements presently set forth for other immigrants seeking citizenship in the United States.

We are opposed to employer sanctions without a clearly identified, simple working, and accountable national identity program.

On the national identity program, I have had people come to me and work for me and present me with a social security card and other identification, only to get a letter from the Social Security Administration that that card and that name didn't match. And I had to send back and notify them as near as I could consider there was a card printed, and I think that money went into the general fund for social security. And if we have refunded it, we may lose a source of revenue there.

Mr. HALL. Is it fair to say you are against this bill?

Mr. HORNIBROOK. I think we are getting pretty close to that.

I am going to say this. We as cattlemen, we appreciate your views in somewhat of a unique situation here. We would be glad to volunteer our services, to work with you, and see if we cannot work out an amiable solution. Your situation is well-recognized. You have my sympathies.

[The complete statement follows:]



**NATIONAL  
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STATEMENT

of the

NATIONAL CATTLEMEN'S ASSOCIATION

Before the

Subcommittee on Immigration, Refugees

and International Law

of the

Committee on Judiciary

Regarding

H.R. 1510--Immigration Reform

and Control Act of 1983

Presented by:

Ted Hornibrook, Chairman  
Labor Committee  
Goldendale, Washington

March 10, 1983

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*The National Cattlemen's Association is the national spokesman for all segments of the nation's beef cattle industry--including cattle breeders, producers, and feeders. The NCA represents approximately 245,000 professional cattlemen throughout the country. Membership includes individual members as well as 50 affiliated state cattle associations and 19 affiliated national breed organizations.*

SUMMARY

The NCA acknowledges that there are serious problems with current immigration laws and that they do need to be re-appraised and amended to bring under control the increasing flow of illegal aliens into this country.

Corrective legislation must recognize the needs that are unique in agriculture. It must be fair and equitable to the employer who depends on alien labor as a vital part of his operation.

H.R. 1510, the Immigration Reform and Control Act of 1983, has, as is currently introduced, certain provisions which we believe will have a serious impact on agriculture.

While H.R. 1510 includes many areas of interest to the cattle industry, of primary concern to us are the following:

Legalization--The NCA believes a blanket amnesty will send the wrong signal to the impoverished in other countries. It gives an unfair favoritism to those who have willfully broken our laws over those who wait patiently for legal immigration. It contradicts efforts to establish control of our borders. It will also impose an undue financial burden on our federal government.

Employer Sanctions--The NCA opposes employer sanctions without a clearly identified, simple, workable and accountable national identity program.

Provisions in H.R. 1510 essentially place the whole burden of responsibility on the employer putting him in the role of enforcer, which should not be the case.

H-2 Worker Programs--H-2 worker programs or others of this kind must recognize the needs of agriculture. They must include criteria that is equitable and fair for both the employer and the employee. Burdensome red tape and regulations should be minimized.

Such programs should be designed to work and help the agricultural operator, not discourage him.



My name is Ted Hornibrook. I am a cattle rancher from Goldendale, Washington. I currently serve as Chairman of the National Cattlemen's Association Labor Committee. I appreciate the opportunity to testify before this committee today representing the views of 245,000 cattle producers and cattle feeders throughout the United States. The NCA position on the Immigration Reform Act has been established through two years developing the resulting position statement.

The NCA is vitally interested in H.R. 1510, the Immigration Reform and Control Act of 1983. We believe that if this bill is enacted as introduced, it will have a serious impact on our industry.

We acknowledge there are serious problems with the current immigration laws and that they do need to be re-appraised and amended to bring under control the increasing flow of illegal aliens into this country. However, H.R. 1510 has provisions that, in our opinion, have not been subject to realistic analysis and are burdensome, costly, and biased against agricultural employers.

We recognize that a majority of the alien agricultural labor is associated with farming and the harvesting of produce. The cattle industry also relies on this same labor force for certain occasions.

I would like to address specific provisions in H.R. 1510 which are of concern to the cattle industry.

#### LEGALIZATION

We interpret amnesty for illegal aliens as an "easy out" with innumerable deficiencies. Administration officials warned Congress in July 1982 that an

attempt to grant blanket amnesty to millions of illegal aliens could mean more than \$10 billion in new state and federal welfare costs over the first four years after becoming legal. A blanket amnesty for lawbreakers or the promise of it sends the wrong signal to the impoverished in other countries. This is a contradiction of efforts to establish controls of our borders.

Amnesty gives an unfair favoritism to those who have willfully broken our laws over those who wait patiently for legal immigration. The very process should be carefully detailed to you, before this bill is enacted.

The NCA, while opposing a blanket naturalization program, would be agreeable to a well-documented program which permits the needed number of working aliens who would be gainfully employed to become citizens; provided they meet the same requirements presently set forth for other immigrants seeking citizenship in the United States.

#### EMPLOYER SANCTIONS

The NCA is opposed to employer sanctions without a clearly identified, simple, workable, and accountable national identity program that will not unfairly discriminate against those persons of foreign extraction that are legally in the United States.

Without a workable national identity program, employer sanctions would be costly and unenforceable. They have been tried without success in other countries as well as in several states.

Provisions in H.R. 1510 essentially place the whole burden of responsibility on the employer putting him in the role of law enforcer which should not be the case.

In no way does the cattle industry endorse the concept that employer sanctions should include criminal penalties making a convicted felon with

prison sentencing capability on an otherwise law abiding, tax paying employer.

The cattle feedlots and processing plants are dependent on a permanent work force for their daily operation; not one that might be seriously depleted by an over-zealous government "hit squad" who would spend an undetermined length of time in interviews, records inspections, and searches for illegals.

#### H-2 WORKER PROGRAM

H.R. 1510 does make certain changes in the H-2 worker program regarding agriculture. Unfortunately, we do not believe they address the real needs of agriculture. Agricultural needs for a temporary worker program are unique in that they must consider seasonal requirements, climatic conditions as well as existing livestock and crop conditions.

There are some basic criteria, in our opinion, which must be in any program of this kind to be workable and beneficial for agriculture, the employer and employee alike. They are:

- \*\*Authority for administering a H-2 worker program for agriculture should be assigned to the U.S. Department of Agriculture.
- \*\*The H-2 program must be made flexible because it provides a legal framework for employing labor already present in the American labor market.
- \*\*The local labor market, for labor certification purposes, should mean the area from which workers can and would be willing to commute on a daily basis.
- \*\*The H-2 program should have minimum recruitment standards.
- \*\*Employers should not be required to retain any either domestic or H-2 workers of unacceptably low productivity beyond a reasonable time.



\*\*Employer liability and responsibility to worker benefits for housing and food should be included as in establishing the documented prevailing wage rate.

The NCA is willing and anxious to work with members of this committee and staff to produce legislation that will help to correct the existing illegal alien problems. We must, however, keep in mind that agriculture needs an adequate labor force at the right time to continue to assure consumers food and fiber needs at reasonable prices.

We appreciate the opportunity to be here.

Mr. MAZZOLI. Mr. Norton, you are recognized for 5 minutes.

Mr. NORTON. I am John Norton, president of the J. R. Norton Co., Phoenix, Ariz., and chairman of the executive committee of the United Fresh Fruit and Vegetable Association, Irvine, Calif., of which I currently serve as a director I have served in the capacity of board chairman of both of these organizations.

I would like to add that I have been an agricultural employer continuously for 28 years, and 10 of those years I employed braceros under the old Public Law 78.

The United Fresh Fruit and Vegetable Association, "United," is the national trade association of the fresh produce industry. Its 260 member companies handle over 80 percent of the fresh fruits and vegetables commercially marketed in the United States and are involved in all facets of the industry, including growing, shipping and distributing fresh fruits and vegetables.

The Western Growers Association, WGA, is a trade association representing growers, shippers and packers. Its members produce the vast majority of the fresh fruits and vegetables grown in California and Arizona.

Without question, the fresh fruit and vegetable industry is the most labor-intensive segment of agriculture in the United States.

The industry is therefore vitally concerned with the Immigration Reform and Control Act of 1983 that is now pending before this subcommittee. This legislation, as you know, would reform the Nation's immigration laws and would modify the existing Department of Labor temporary foreign worker program.

We want to thank Chairman Mazzoli and the other subcommittee members for this opportunity to provide our industry's views and comments on this most important legislation.

At United's just-concluded 79th annual convention, the membership reaffirmed a policy which states that it is essential that an adequate labor force be available to our agricultural industry and that the achievement of this goal may necessitate the employment of nonresident labor. However, before United will accept any proposal incorporating sanctions against employers of undocumented workers, employers must be assured of an adequate work force and a practical means of positive identification. United also feels that

any proposed legislation must provide for consideration of the seasonal nature of agriculture's labor needs.

Western Growers Association's policy statement embodies all of the concepts outlined by United.

The fresh fruit and vegetable industry objects to the notion that employers should be utilized as the primary means of enforcing the Nation's immigration laws. No matter what legislation is finally passed by this Congress, increased enforcement along this country's borders with Canada, Mexico, and at other points of entry must be seriously considered if we are to stem the flow of illegal immigration.

However, if the employer sanction provisions remain in H.R. 1510, the fresh fruit and vegetable industry must be assured that it will have an adequate temporary labor force through a reliable and effective foreign worker program. It is estimated that well over 300,000 seasonal workers per year are needed to meet the labor needs of the industry.

Fresh fruits and vegetables, for the most part, are highly perishable commodities. Harvesting must occur as soon as possible after the appropriate level of maturity is reached. The maturity of these commodities depends on many factors over which growers have little or no control, not the least of which is the peculiarities associated with weather.

Our growers and shippers do not have the luxury of waiting several days to arrange for an adequate work force. They must have a sufficient number of workers at the time and at the place of need if we as an industry are to be able to supply a bountiful harvest of fresh produce to the Nation's citizens. Any temporary foreign worker program that Congress approves must be flexible and reliable enough to meet the labor needs of this highly labor-intensive industry.

Time and time again the industry has attempted to hire an adequate number of U.S. workers. Unfortunately, in virtually all instances we are left with the same inevitable conclusion, a sufficient number of domestic workers who are willing, able, qualified and available to perform the task required does not exist. Domestic labor sources have not and cannot provide sufficiently dependable and qualified workers to meet the needs of this industry. A workable temporary foreign labor program is essential if our industry is to continue to provide the highest quality fruits and vegetables at a reasonable cost to consumers.

As an example, following highly publicized Border Patrol raids of strawberry fields in South California, the growers attempted to hire domestic workers through the State employment department. Although offering wages from \$5 to \$10 per hour, most employees referred did not work more than a few hours.

As currently drafted, we believe that H.R. 1510 would drastically and adversely affect the harvest labor availability for fresh produce growers and severely curtail the abundant supply of our naturally healthful products to the Nation's consumers. The bill would require our members, if sufficient number of domestic employees are unavailable for hire, to utilize an H-2 program which permits the employment of temporary foreign nationals in U.S. agriculture.

This bill specifically addresses the H-2 program and a number of its provisions.

The H-2 program has been successfully utilized on a very limited basis. I stress limited because in fact no more than 18,000 H-2 workers on an annual basis have ever been employed in the United States. While we urge that the basic framework of this program be retained, we strongly recommend that it be modified to take into account the high labor intensity and perishability of our crops.

Specifically, we recommend that section 211 be amended by giving the Attorney General, in consultation with the Secretary of Agriculture and the Secretary of Labor, the lead authority and responsibility for approving all future regulations promulgated under an H-2 program.

As the Immigration and Naturalization Service, an arm of the Department of Justice, is the chief agency enforcing this act, we believe that the Attorney General is the proper authority for approving and implementing such regulations. The Attorney General can also act in the capacity of a disinterested third party where a genuine difference of opinion may occur.

Over the years, the Department of Labor has interpreted the terms "strike" or "labor dispute" to mean occasions when two or more workers act together. In those cases of a strike or labor dispute, an employer's petition for H-2 workers has been denied. Severe disruption of a farmer's harvesting operations has resulted from this action. We propose that the definition of a strike or labor dispute be clarified so that disruption of harvesting operations would be minimized. To accomplish this goal, we recommend the following legislative language:

A labor dispute shall be deemed to exist at any job site when 50 percent or more of the bona fide agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions.

Such labor dispute shall be deemed to have terminated when less than 50 percent of the agricultural employees of the employer remain on strike, but in no case shall the labor dispute survive the term of employment. A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met. Upon application of any interested party, the Secretary of Labor shall, within 3 days when possible, but not more than five days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

Moreover, H.R. 1510 must be amended to specifically provide for Federal preemption. For example, two bills now pending before the California Legislature would preclude Californians from participating in any temporary foreign worker program. Individual States must not be allowed to cut off a farmer's labor supply, particularly if the H-2 program is the only program available to a grower to meet his labor needs.

Additionally, the fresh fruit and vegetable industry believes that there is considerable merit to a proposal developed by the Agricultural Employment Work Group which meets under the auspices of the Department of Agriculture. That group, comprised of employers, employee representatives, and academicians, recommended a program of orderly transition from the current system of temporary worker supply to one which requires the employment of do-



mestic workers or, in the alternative, the employment of workers either under a temporary foreign worker program or an H-2 program. We suggest that the subcommittee give this proposal serious consideration.

We feel that the modifications to the H-2 program, as provided for in H.R. 1510 and those we have recommended, will result in a more streamlined H-2 program for fruit and vegetable employers. However, we continue to be concerned that the additional estimated 300,000 foreign workers that will be needed by this industry if the bill passes will never be certified in a timely manner by the Department of Labor.

Therefore, we propose that those employers who opt to do so be given the opportunity to avail themselves of an open-market-type foreign worker program. Such a program would be designed as a more flexible alternative that would better meet the needs of those employers growing the most highly perishable and labor-intensive fresh fruits and vegetables.

Finally, we strongly recommend that the bill should include a requirement that the Border Patrol obtain properly executed search warrants for the grower's consent before entering a grower's harvesting operation.

The Border Patrol's own statistics reveal that while only 7 to 10 percent of this country's undocumented aliens are employed in agriculture, approximately 50 percent of the Border Patrol's apprehensions of aliens occur in agriculture. This disparity results from the Patrol's current right to enter open fields without a search warrant.

In all other industries, the Border Patrol must have a search warrant before it may enter a plant, a factory, a hotel, or a building to search for undocumented aliens. Growers have exactly the same expectation of privacy in their fields as factory owners and hotel operators. This right is guaranteed under the fourth amendment to the Constitution.

We once again want to pledge our continued support and assistance to you, Chairman Mazzoli, and to the other members of the committee as you work for needed reforms in the Nation's immigration laws and as you develop a truly workable foreign agricultural labor program for U.S. agriculture.

Mr. MAZZOLI. Thank you.

[The complete statement follows:]

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STATEMENT  
OF  
JOHN R. NORTON III  
  
BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW  
OF THE  
HOUSE COMMITTEE ON THE JUDICIARY  
ON  
THE IMMIGRATION REFORM AND CONTROL ACT OF 1983, HR 1510

March 10, 1983

I am John Norton, President of the J.R. Norton Company, Phoenix, Arizona and Chairman of the Executive Committee of the United Fresh Fruit and Vegetable Association, Alexandria, Virginia. In addition to presenting this statement on behalf of United, I also represent the Western Growers Association, Irvine, California, of which I currently serve as a director. I have served in the capacity of Board Chairman of both of these organizations.

The United Fresh Fruit and Vegetable Association (United), is the national trade association of the fresh produce industry. Its 2600 member companies handle over 80 percent of the fresh fruits and vegetables commercially marketed in the U.S. and are involved in all facets of the industry including growing, shipping and distributing fresh fruits and vegetables.

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Without question, the fresh fruit and vegetable industry is the most labor intensive segment of agriculture in the United States.

The industry is therefore vitally concerned with the "Immigration Reform and Control Act of 1983" that is now pending before this subcommittee. This legislation, as you know, would reform the nation's immigration laws and would modify the existing Department of Labor temporary foreign worker program. We want to thank Chairman Mazzoli and the other subcommittee members for this opportunity to provide our industry's views and comments on this most important legislation.

At United's just-concluded 79th Annual Convention, the membership reaffirmed a policy which states that it is essential that an adequate labor force be available to our agricultural industry and that the achievement of this goal may necessitate the employment of non-resident labor. However, before United will accept any proposal incorporating sanctions against employers of undocumented workers, employers must be assured of an adequate work force and a practical means of positive identification. United also feels that any proposed legislation must provide for consideration of the seasonal nature of agriculture's labor needs.



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However, if the employer sanction provisions remain in HR 1510, the fresh fruit and vegetable industry must be assured that it will have an adequate temporary labor force through a reliable and effective foreign worker program. It is estimated that well over 300,000 seasonal workers per year are needed to meet the labor needs of the industry.

Fresh fruits and vegetables, for the most part, are highly perishable commodities. Harvesting must occur as soon as possible after the appropriate level of maturity is reached. The maturity of these commodities depends on many factors over which growers have little or no control. Not the least of which is the peculiarities associated with weather. Our growers and shippers do not have the luxury of waiting several days to arrange for an adequate work force. They must have a sufficient number of workers at the time and at the place of need if we as an industry are to be able to supply a bountiful harvest of fresh produce to the nation's citizens. Any temporary foreign worker program that Congress approves must be flexible and reliable enough to meet the labor needs of this highly labor intensive industry.

Time and time again, the industry has attempted to hire an adequate number of U.S. workers. Unfortunately, in virtually all instances we are left with the same inevitable conclusion...a sufficient number of domestic workers who are willing, able, qualified and available to perform the tasks required does not exist. Domestic labor sources have not and can not provide sufficiently dependable and qualified workers to meet the needs of this industry. A workable temporary foreign labor program is essential if our industry is to continue to provide the highest quality fruits and vegetables at a reasonable cost to consumers.

As an example, following highly publicized border patrol raids of strawberry fields in southern California, the growers attempted to hire domestic workers through the state employment department. Although offering wages from \$5.00 to \$10.00 per hour, most employees referred did not work more than a few hours.

As currently drafted, we believe that HR 1510 would drastically and adversely affect the harvest labor availability for fresh produce growers and severely curtail the abundant supply of our naturally healthful products to the nation's consumers. The bill would require our members, if sufficient numbers of domestic employees are unavailable for hire, to utilize an H-2 program which permits the employment of temporary foreign nationals in United States agriculture. This bill specifically addresses the H-2 program, and a number of its provisions.

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We once again want to pledge our continued support and assistance to you, Chairman Mazzoli, and to the other members of the committee as you work for needed reforms in the nation's immigration laws and as you develop a truly workable foreign agricultural labor program for United States agriculture.



Mr. MAZZOLI. Mr. Seeligson.

Mr. SEELIGSON. My name is Frates Seeligson. I am a cattle rancher from San Antonio, Tex. Presently I am serving as president of the Texas & Southwestern Cattle Raisers Association, representing 14,000 members in Texas, Oklahoma, and surrounding States.

The Texas & Southwestern Cattle Raisers Association operates on the basis of the following premises.

The first is that Mexico's problem is our problem. She is our country's largest oil supplier, our third largest trading partner, and owes our banks \$25 billion. We have to provide an outlet for her unemployed masses who are coming, like it or not. We have jobs that our people don't want and their people do. We want to have enough control to stop the flow.

The only thing in worse shape than Mexico's problem is our immigration problem. The situation is completely out of hand. Nobody knows how many illegal aliens there are, where they are, or what they are doing. Most of them who want in eventually get in. With the tide of illegal immigration, not only from Mexico but all over the world, it is imperative that we seize control of our borders if we wish our country to keep any kind of semblance to the one which we know and love.

Mexico is in a sorry mess. She owes \$85 billion in foreign debt. Although no one really knows, unemployment is estimated at over 50 percent. With a birth rate of 3.6 percent, the population will double every 20 years. Half of the people are under 17. With each dollar drop in oil prices, Mexico's income goes down approximately \$600 million. A real worry exists about Mexico's future.

Nobody knows how long the Mexican people will endure the hardship of austerity before there is a widespread public backlash. Even before the sweet seduction of communism, Mexico had its share of revolutions. Mexico is the price for Russia. They could care less about El Salvador and Guatemala except as stepping stones to our largest oil supplier.

The last thing the people of Texas want is an El Salvador across the Rio Grande. In January, almost 84,000 illegal aliens were caught along the border, up 45 percent over the same period a year ago. With the drop in oil prices, the problems are just beginning.

The people are young, hungry, unemployed, and are coming across the river to the promised land. To stop them, we have an undermanned force of 300 men trying to operate an enforcement program that is an exercise in complete futility. They catch a fraction of the illegal aliens, deport them with no penalty to anyone, catch them again a few days later, deport them with no penalty, catch them again, ad nauseum.

The first requirement is to find out how many illegal aliens are now here. Until we know this, there is no way to understand fully the magnitude of our problem. To determine who is whom, some amnesty must be offered to induce an illegal alien to register.

We all know that amnesty is a blind jump into the future. My membership feels that U.S. citizenship is a precious birthright and that the provisions of the present bill are too generous. We run the risk of spending unknown billions in welfare costs, rewarding the lawbreakers, and sending wrong signals to the poor in other countries.

We feel that the better approach is to use the existing registry procedures under the present immigration law by updating the registry date of 1948 to 1973. The people who qualify under this revised statute will become citizens in a 10-year period similar to those legal immigrants seeking naturalization.

While the amnesty provisions are being worked out, the illegal alien flow will continue. To stop the flow, the bill proposes to build up the border patrol and impose employer sanctions.

Strengthening the border patrol sounds good. Although it has 2,300 agents, no more than 300 are on duty at a time because of rotating shifts and vacations. Double it, triple it, then get in a car and drive from Brownsville, Tex., to San Diego, Calif., in the daylight and come to your own decision. The Immigration Service will catch more aliens, but it will not stop them. A Berlin wall will; 900 agents won't stop them.

The second requirement to stem the flow is employer sanctions. In our opinion, this segment is nothing but window dressing. The success of any program is going to be determined by the support given it by our U.S. citizens.

Without a good H-2 or guest worker program to provide an incentive to cooperate, the employer can and will circumvent the act by accepting forged and fraudulent social security cards, birth certificates, or drivers' licenses, allowing him to evade responsibility for illegal alien employment. Employer sanction laws in other States and countries have a dismal record for success because of smart lawyers, lack of enforcement resolve, lack of personnel, and too many steel-trap minds constantly devising ways to evade responsibility.

The problem must be solved. Our recommendations for solving the horrifying problem of runaway illegal immigration are:

Adopt our recommended amnesty approach;

Beef up the border patrol in an effort to establish more control as part of an overall package.

The H-2 program was originally set up by Congress to allow documented alien workers to take jobs that U.S. citizens turned down. As far as Texas is concerned, administrative rulings by the Department of Labor abrogated the original mandate of Congress and this program is not used. As part of the whole package, H-2 must be reworked by statute and administratively to give agricultural employers access to a stable work force.

The U.S. Government should establish permanent identification cards for each and every citizen of our country. Any employer who hires a person without this ID card should be subject to civil penalties. We feel that this will not only control the immigration flow, but give as much of a boost to foreign workers as our domestic market will permit.

The impact of ignoring these measures, not only to us but to future generations, is devastating. We would rather have nothing than a measure that promises hope, deludes us into tranquility, and leaves us with the problems unresolved.

Thank you.

[The complete statement follows:]



TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION

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FRATES SEELIGSON, PRESIDENT  
JOHN H. SHELTON III, 1ST VICE PRESIDENT

JOHN E. BIRDWELL II, 2ND VICE PRESIDENT  
DOH C. KING, SECY-GEN MGR

STATEMENT  
of the  
TEXAS AND SOUTHWESTERN CATTLE RAISERS ASSOCIATION

Before the  
Subcommittee on Immigration, Refugees  
and International Law  
of the  
Committee on Judiciary

Regarding  
H.R. 1510--Immigration Reform  
and Control Act of 1983

Presented by:  
FRATES SEELIGSON, President  
San Antonio, Texas  
March 10, 1983

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*Texas and Southwestern Cattle Raisers Association represents more than 14,000 livestock producers in Texas, Oklahoma and surrounding states. It has been these cattlemen's spokesman for 106 years.*



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The impact of ignoring these measures, not only to us, but to future generations, is devastating. We would rather have nothing than a measure that promises hope, deludes us into tranquility, and leaves us with the problems unresolved.

THANK YOU!

Mr. MAZZOLI. Mr. Sorn, you are recognized for 5 minutes.

Mr. SORN. Thank you, Mr. Chairman.

The Florida Fruit & Vegetable Association is a growers' organization with substantial membership among those who produce and market fresh fruits, vegetables, and sugarcane in the State of Florida. It has an established policy on immigration matters and has been involved with the H-2 program in Florida since 1947.

FFVA worked closely with this committee and others in the last session of Congress and appreciates the willingness of the committee and staff to hear and consider our views.

In my statement I have not attempted to duplicate what we have already given you in the last Congress on either the operation of the program or the answers to criticisms that come up from time to time on the uses of H-2 workers.

We do believe agricultural employers should use a legal work force. We are for sanctions on employers who knowingly utilize illegal aliens but only if there is an easily identifiable ID card for a worker who can legally work, and there is a viable program to obtain supplementary foreign workers where there are shortages of legal domestic workers.

The changeover from the current agricultural labor situation to the utilization of a legal work force cannot be a traumatic experience for the farm employer or the farm worker. Although we emphasize the necessity to maintain the H-2 program, we do not preclude the need for a different transitional program much less restrictive than the H-2 program.

An agricultural employment work group, sponsored by the U.S. Department of Agriculture, has considered the possibility of a transitional program, and their paper on the subject is attached to our written statement to the subcommittee. We hope the committee will consider a transitional program in addition to the H-2 program.

With specific reference to amendments to H.R. 1510, we recommend:

First, that there be one identifier for a worker who can legally work in the United States. The proposed program is too cumbersome for many agricultural situations where workers are hired in the field and for short periods of time;

Second, that the length of stay in this country of an individual H-2 worker be governed by regulations of the Department of Justice, Immigration and Naturalization Service, as it is now and not the U.S. Department of Labor. The length of certification for an employer to utilize H-2 workers would remain within the jurisdiction of the U.S. Department of Labor. Under any conditions, the H-2 worker could only stay as long as he is employed by a U.S. Department of Labor certified employer;

Third, that there be a workable and equitable definition of "labor dispute" included. We have problems with the current regulations which allow two workers to shutdown the certification process involving many more workers;

Fourth, that only domestic workers who have agreed to work be included in the determination of the numbers of workers available for determination of H-2 certification. I believe your current bill

indicates only workers that indicate they intend to work, and I think there is a vast difference between the two;

Fifth, that a de novo hearing procedure be included in the review procedures when certification is denied; and

Sixth, that a Federal preemption be included in the law.

Our written statement includes backing for the other parts of section 211, which we believe are necessary in order to end up with a viable H-2 program.

We appreciate the opportunity of again expressing our views to this subcommittee.

Mr. MAZZOLI. Thank you very much, Mr. Sorn.

[The complete statement follows:]



S U M M A R Y  
of the STATEMENT of the  
FLORIDA FRUIT & VEGETABLE ASSOCIATION  
before  
HOUSE SUBCOMMITTEE ON IMMIGRATION, REFUGEES & INTERNATIONAL LAW  
of  
HOUSE JUDICIARY COMMITTEE  
March 10, 1983

Re: H. R. 1510 - IMMIGRATION REFORM & CONTROL ACT OF 1983

Presented by George F. Sorn,  
Assistant General Manager, FFVA

1. Florida Fruit & Vegetable Association is a growers' organization with substantial membership among those who produce and market fresh fruits, vegetables and sugar cane in the state of Florida. It has an established policy on immigration matters and has been involved with the H-2 Program in Florida since 1947.

2. FFVA worked closely with this committee and others in the last session of Congress and appreciates the willingness of the committee and staff to hear and consider our views.

3. We believe agricultural employers should use a legal work force. We are for sanctions on employers who knowingly utilize illegal aliens BUT only if:

- a. there is an easily identifiable I.D. card for a worker who can legally work, and
- b. there is a viable program to obtain supplementary foreign workers where there are shortages of legal domestic workers.

4. The changeover from the current agricultural labor situation to the utilization of a legal work force cannot be a traumatic experience for the farm employer or the farm worker. Although we emphasize the necessity to maintain the H-2 Program, we do not preclude the need for a different transitional program much less restrictive than the H-2 Program. An Agricultural Employment Work Group, sponsored by the U. S. Department of Agriculture, has considered the possibility of a transitional program and their paper on the subject is attached to our written Statement to the subcommittee. We hope the committee will consider a transitional program in addition to the H-2 Program.

5. With specific reference to amendments to H.R. 1510, we recommend:

- a. that there be one identifier for a worker who can legally work in the U. S. The proposed program is too cumbersome for many agricultural situations where workers are hired in the field and for short periods of time;
- b. that the length of stay in this country of an individual H-2 worker be governed by regulations of the Department of Justice, Immigration & Naturalization Service as it is now and not the U. S. Department of Labor. The length of certification for an employer to utilize H-2 workers would remain within the jurisdiction of the U. S. Department of Labor; under any conditions, the H-2 worker could only stay as long as he is employed by a U. S. Department of Labor certified employer;
- c. that there be a workable and equitable definition of "labor dispute" included; we have problems with the current regulations which allow two workers to shut down the certification process involving many more workers.
- d. that only domestic workers who have "agreed" to work be included in the determination of the numbers of workers available for determination of H-2 certification;
- e. that a "de Novo" hearing procedure be included in the review procedures when certification is denied, and
- f. that a federal preemption be included in the law.



6. Our written Statement includes backing for the other parts of Section 211 which we believe are necessary in order to end up with a viable H-2 Program.

7. We appreciate the opportunity of again expressing our views to this subcommittee.

GFS/mrd

STATEMENT  
of the  
FLORIDA FRUIT & VEGETABLE ASSOCIATION  
before  
HOUSE SUBCOMMITTEE ON IMMIGRATION, REFUGEES & INTERNATIONAL LAW  
of  
HOUSE JUDICIARY COMMITTEE

Re: H.R. 1510 - IMMIGRATION REFORM & CONTROL ACT OF 1983

March 10, 1983

Presented by George F. Sorn,  
Assistant General Manager, FFVA

The Florida Fruit & Vegetable Association is an agricultural trade association with substantial membership among those who produce and market fresh fruits, vegetables and sugar cane in the State of Florida.

FFVA's position on various labor issues has been developed over a period of many years by its Labor Committee, which is comprised of grower-employers from throughout Florida and approved by FFVA's Board of Directors.

FFVA POLICY

The comments in this testimony are based on FFVA's Labor Policy, which includes the following:

1. Illegal immigration must be controlled - but it must be done so there is no traumatic effect on agricultural producers in Florida and the United States..
2. Florida agricultural employers should do all reasonably possible to ascertain the legal employability of their farm workers without violating the individual rights of workers. Agricultural employers should not knowingly employ illegal aliens.

FFVA will support Federal legislation that would make it illegal to knowingly hire illegal aliens provided it does not place an undue hardship on the employer. If sanctions upon employers are to be considered, then there must be:

- a. one easily identifiable I.D. card, which can be used by the employer as the means of determining whether a worker can legally work (preferably this I.D. card should be a "re-designed" Social Security card), and
- b. a legal supplemental source of labor available to replace the illegal workers. This could be accomplished either through a separate "guest worker" program or the current H-2 program with modifications to current regulations to ensure its ability and viability to replace illegal workers where necessary.

3. FFVA continue to support the importation of supplemental foreign workers where necessary to avoid crop losses and



disruption of farm production.

4. FFVA continue to work toward more realistic legislation and regulations to ensure the U. S. Department of Labor's supplemental worker certification process reflects a farm worker shortage in sufficient time for relief to be obtained without a crop loss.

#### PREVIOUS EFFORTS

The Administration and Congress are to be commended for considering ways to drastically reduce and, if possible, eliminate the presence of millions of illegal aliens and refugees in the United States. FFVA worked closely with this subcommittee and its staff in the 97th Session of Congress and appreciate the time and effort expended by the members and their staff to ensure adequate agricultural employer input into the deliberations. It is unfortunate that the effort fell short of bill passage.

AGRICULTURE AND ALIEN WORKERS

As a goal, we believe U. S. employers should strive to employ a legal work force. The presence of vast numbers of illegal workers can only be detrimental to many American citizens and to other workers who are legally able and willing to work.

Although it is preferable for employers to utilize a work force of legal U. S. residents, it will continue to be necessary and in the national interest to import temporary seasonal workers in critical labor intensive tasks in industries for which the only option would be to limit production and thereby reduce employment opportunities for legal U. S. residents. Admission of supplementary alien labor for these tasks in order to facilitate higher levels of production and domestic employment in other phases of productions, processing and distribution may be desirable under circumstances that protect domestic workers similarly employed. This is particularly important in Agriculture where availability of labor for a critical high labor task in the production of a commodity may effectively limit the volume of production that can be economically undertaken.

FFVA has a longstanding interest in and has operated a program for the legal importation of supplementary temporary non-immigrant alien workers for Florida Agriculture. Some sugar employers in Florida have utilized H-2 workers since their importation during the early years of the second World War.

We feel the continuation of an H-2 program with reasonable regulations, aimed at protecting U. S. workers similarly

employed , is imperative and the ability of U. S. employers to avail themselves of this means of obtaining supplemental workers should be preserved over and above any transitional period measures and solutions which the Congress may consider on the illegal alien and refugee question.

There is no doubt in our minds that some sort of program to allow foreign workers to legally immigrate to the U. S. to perform temporary jobs as non-immigrant aliens is an essential part of any solution to the illegal alien problem. Immigration statistics reflect that the curtailment of the Bracero Program and, the restrictive regulations imposed on the H-2 employers in the early and mid 1960's must have been a major catalyst in the tremendous increase in the illegal alien problem since that time.

The following statistics taken from various issues of the Annual Reports of the Immigration & Naturalization Service pertain:



Foreign Workers Admitted for Temporary Employment in U.S.  
Agriculture  
by Year - 1958-1976

Deportable Aliens Apprehended in Agriculture in U.S.

	Temporary Workers Admitted for Agricultural Employment	Deportable Aliens Apprehended in Agriculture
1958	433,704	6,310
1959	464,128	4,935
1960	447,207	4,402
1961	312,991	5,162
1962	303,638	5,574
1963	243,120	9,143
1964	237,700	10,689
1965	155,671	14,248
1966	64,881	24,385
1967	57,720	27,830
1968	50,782	39,301
1969	43,527	50,881
1970	47,483	53,674
1971	42,142	74,423
1972	38,752	84,084
1973	37,294	101,220
1974	33,908	111,289
1975	25,434	116,250
1976	22,124	116,197

Source: Various issues of the Annual Report of the  
Immigration & Naturalization Service

The above table only indicates the number of illegal aliens apprehended in U. S. Agriculture and not the total number used by U. S. Agriculture. It is safe to assume therefore that most of the H-2 and Public Law 78 temporary farm workers of the 50's and 60's have of necessity been replaced by illegal aliens and not by American workers.

The transition from employment situations wherein illegal aliens are utilized on an unregulated basis to a domestic work force supplemented, where necessary, by limited numbers of temporary

legal alien workers admitted and employed under regulated conditions and labor standards will require substantial adjustments for many employers. This will be particularly true in certain regions and commodities which are thought to be heavily dependent on illegal workers for high labor using seasonal tasks. While it is necessary to quickly implement strict border control and prohibitions against alien employment, it will be difficult for some employers to rapidly adjust their hiring and labor utilization practices without traumatic economic and human consequences. Neither a small-scale transitional program nor the amnesty provisions of H.R. 1510 available for illegal aliens to become permanent residents is likely to meet the need created by the reduction in illegal alien workers in Agriculture.

#### SPECIFIC RECOMMENDATIONS

The following specific recommendations are made with reference to H.R. 1510.

1. That Part A section 101 (b) be amended so that within a reasonable period of time, the system of identifying individuals who can legally work in the U. S. be less cumbersome and be reduced so that one identification be used - preferably a revised and "foolproof" Social Security card. The cumbersome system specified in this section will not work in much of

Agriculture where a high percentage of the work force is hired under field conditions and often from day-to-day.

2. (Note: at the time of preparation, we did not have access to H.R. 1510 and our reference was H.R. 7357 from the 97th Session of Congress - it is probable technical amendments have accomplished the following comments.)

That Part A Section 101 (b) (1) be amended so that the reference is to the Migrant and Seasonal Agricultural Worker Protection Act, which on April 14, 1983, will replace the Farm Labor Contractor Registration Act of 1963 as amended.

3. That Part B Section 211 (b) (1) be amended so the reference is to regulations of the U. S. Department of Justice Immigration & Naturalization Service rather than the Department of Labor. Current regulations of the Immigration & Naturalization Service regulate the length of stay of the worker. Current U. S. Department of Labor regulations relate to the length of certification given to employers for specific occupations.

4. That Part B Section 211 (b) (3) "(2Bi)" be amended to include a workable definition of "labor dispute." Under current U. S. Department of Labor and Immigration & Naturalization Service definitions, any two or more persons at the job site can create a labor dispute and shut down the process to obtain supplemental H-2 workers. (See Attachment "A" for suggested guidelines.)

5. That Part B Section 211 (b) (3) "(3 Aii)" be amended so that the Secretary of Labor shall take into consideration for determining the number of qualified eligible individuals



available for work only those who have "agreed" to work and not those who have only "indicated" an availability for work. Many individuals who indicate they are available for work for various reasons may in fact have employment and will not agree to work when the date of employment arrives.

6. Part B Section 211 (b) (3) "(3Ci)" be amended to provide for a "denovo" administrative hearing as a part of the procedure for expedited review where the Secretary has denied certification to an employer who has requested approval to recruit and employ H-2 workers. In many cases, the facts used to make the denial decision and the facts at the actual time of denial and subsequently are substantially different and need to be taken into consideration in any hearing procedure.

7. Part B Section 211, needs to be amended so that it will preempt any state or local law regulating the admissibility of non-immigrant workers.

#### GENERAL COMMENTS ON H.R. 1510

Section 211 -

We have made no comments on other parts of Section 211. Absence of comment should not be taken to mean we do not approve of those sections - only that at this time, we do not see the need for amendments.

There are sections that we consider extremely IMPORTANT such as sections which (1) retain with the Attorney General the ultimate authority for allowing any alien to enter the U.S. either as an immigrant or as a non-immigrant, (2) the work test for agricultural workers being at the "time and place needed" (not the entire U. S.); (3) the 50-day advance application filing (vs 80 days), (4) the necessity for the U. S. Department of Labor to certify 20 days or more in advance of need, (5) the expedited review procedures and (6) meaningful consultation with the U. S. Department of Agriculture in any regulatory process or Justice Department decision which would impact adversely on agricultural employers.

#### OTHER CONSIDERATIONS

We realize to get from where Agriculture is now using a substantial number of illegal workers to where we should be utilizing a completely legal work force could take time and could be a traumatic experience for employers and workers alike. It has been suggested that some sort of transitional program should be considered to cover the period of turmoil. We do not object to this suggestion so long as the H-2 program is left in place as an alternative. For the last several years, a group known as

Agricultural Employment Work Group sponsored by the U. S. Department of Agriculture and comprised of 25 individuals representing employers, worker groups and the academic field, have been meeting and agonizing over various issues affecting agricultural employment in the U. S. One of the papers published in December 1982 deals with "ALIEN WORKERS IN AMERICAN AGRICULTURE: AN ANALYSIS AND RECOMMENDATIONS." A part of that paper is devoted to the suggestion that a temporary guest worker program is necessary. Attached is a copy of this particular paper as Attachment "B" as part of this testimony without further comment.

REFERENCE TO PRIOR TESTIMONY

On October 14, 1981, FFVA presented testimony before this subcommittee going into much more detail in the actual operation of the H-2 Program in Florida and answering many of the often-asked questions about the Program. We have not attempted to repeat the information in that statement in this presentation. However, the information presented in 1981 is still relevant and should be considered in any consideration of the H-2 Program as a solution to the illegal alien problem in U. S. Agriculture.



We appreciate the opportunity to present our views and urge this committee give full consideration to the recommendations so that the end product will eliminate the need for illegal workers in the U. S. and prevent a traumatic effect on both farm employers and farm workers in so doing.

GFS/mrd

ATTACHMENT "A" - DEFINITION OF "LABOR DISPUTE"

ATTACHMENT "B" - AEWG Paper "ALIEN WORKERS IN AMERICAN AGRICULTURE:  
ANALYSIS AND RECOMMENDATIONS" - Dec. 1982

## A T T A C H M E N T   "A"

## DEFINITION OF "LABOR DISPUTE"

A labor dispute shall be deemed to exist at any job site when 50 per cent or more of the bona fide agricultural employees of an employer in the petitioned occupation and at the place of employment, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions.

A labor dispute shall be deemed to have terminated when less than 50 per cent of the agricultural employees of the employer remain on strike; but in no case shall a labor dispute survive the term of an employee's term of employment.

A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met.

Upon application of any interested party, the Secretary of Labor shall, within 3 days where possible, but not more than 5 days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

# **ALIEN WORKERS IN AMERICAN AGRICULTURE: ANALYSIS AND RECOMMENDATIONS**

*Prepared by*

*Agricultural Employment Work Group  
United States Department of Agriculture*

*Second in a series of publications  
on Human Resources in Agriculture*

**Division of Agricultural Sciences  
University of California  
Berkeley, California**

December 1982



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**FOREWORD**

This publication is the second in a series on agricultural employment in the United States. Some of the reports in the series will be broad in perspective, surveying agricultural employment problems and approaches to their resolution. Others, as does this one, will focus specifically on such issues as the employment of foreign workers in U.S. agriculture, noteworthy personnel management innovations, and labor market developments.

The series, including reports of several studies in progress, represents partial fulfillment of the mission of the Agricultural Employment Work Group (AEWG). A major objective in establishing the Work Group was to create a forum for the consideration of agricultural employment and management policies that would advance the well-being of the industry—growers and workers—and society at large. The AEWG was organized in 1980 by the United States Department of Agriculture to study labor issues in the nation's agriculture. Its primary charge was to undertake research and analysis upon which to base recommendations directed toward USDA officials, growers, labor leaders, researchers, and other decision makers who might have a hand in improving the agricultural labor climate.

The Division of Agricultural Sciences, University of California, initiated publication of this series under contract to the Work Group. Activities and projects of AEWG were begun with funds from the Office of the Secretary, U.S. Department of Agriculture. Continued financial support for the Work Group has been provided by the USDA's Economic Research Service and Extension Service, and has been administered through a cooperative research agreement with the Center for the Study of Human Resources, University of Texas at Austin.

Additional copies of this publication can be ordered from:

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## PREFACE

The Agricultural Employment Work Group issued a preliminary report in December 1980—*Agricultural Labor in the 1980's: A Survey with Recommendations*. It offered a consensus view of agricultural labor problems in the United States and general approaches toward resolving them. Since that time the Work Group has engaged in more detailed examination of several recommended areas of action in order to develop more specific ideas for implementing its general suggestions. It has also been discussing aspects of the agricultural labor problem not dealt with in the initial publication. This report originated in AEWG deliberations for nearly a year.

Here the AEWG presents a consensus view of the illegal alien problem in American agriculture and recommends measures for alleviating it. The group formulated this view contemporaneously with the development and introduction of the Administration's proposals for immigration reform, as well as with the extensive Congressional hearings and widespread public discussion of related issues. Of course, this report was influenced and informed by these ongoing events, particularly the debate over current legislative proposals. The Work Group has attempted to consider many of the issues raised by these proposals; however, this document is not a response to any specific proposal.

This report points out that the issues of illegal immigration and employment are complex. It includes a package of recommendations which the Work Group feels, taken together, will achieve the stated goals. While some specific elements recommended here may not be considered desirable by all individual members, the Work Group collectively does endorse the package of recommendations as an approach to meeting stated objectives with the least disadvantage to parties at interest.

The Agricultural Employment Work Group is a unique combination of individuals drawn from agricultural employer and employee interests, the agricultural economics and personnel management research community, and government. Group members who participated in the preparation of this report were:

**Frank Acosta**, Executive Director, Motivation, Education and Training, Inc., Cleveland, Texas  
**Anthony Amenta**, Executive Director, The Shade Tobacco Growers Agricultural Association, Glastonbury, Connecticut  
**Donald Bennett**, Management Consultant, Murphys, California  
**Lindsay Campbell**, Director, Office of Farmworkers and Rural Employment Program, Department of Labor, Washington, D.C. (retired)  
**Charles Covey**, Professor and Extension Economist, University of Florida, Gainesville, Florida  
**Kenneth Deavers**, Director, Economic Development Division, ERS, USDA, Washington, D.C.  
**Ralph De Leon**, President, Servicios Agricolas Mexicanos (SAMCO), Santa Paula, California  
**Robert Emerson**, Associate Professor of Agricultural Economics, University of Florida, Gainesville, Florida  
**Robert Glover**, Director, Center for the Study of Human Resources, University of Texas, Austin, Texas  
**Roger Granados**, Executive Director, *La Cooperativa*, Sacramento, California  
**Alfonso Guilin**, Personnel Manager, Limoneira Company, Santa Paula, California  
**Pat Hall**, Florida State, Farmworker Program, Tampa, Florida  
**Thomas Haller**, Director, Rural Economics Institute, Davis, California  
**James Holt**, Consulting Agricultural Economist, Washington, D.C.  
**Richard Joanis**, Executive Director, Migrant and Seasonal Farmworkers Association, Inc., Raleigh, North Carolina  
**William Johnson**, Program Planner, Motivation, Education and Training, Inc., Cleveland, Texas  
**Charles Kingston**, MFP Enterprises, Inc., Biglerville, Pennsylvania  
**Duane Lindstrom**, National Project Director, Rural Economics Institute, Woodruff, Wisconsin  
**Jack Lloyd**, General Manager, Coastal Growers Association, Oxnard, California  
**John Mamer**, Extension Economist, University of California, Berkeley, California  
**Philip Martin**, Associate Professor of Economics, University of California, Davis, California

**Stuart Mitchell**, Executive Director, Rural New York Farmworker Opportunities, Inc., Rochester, New York

**George Ortiz**, President, California Human Development Corporation, Windsor, California

**George Sorn**, Manager, Labor Division, Florida Fruit and Vegetable Association, Orlando, Florida

**Robert Whelan**, Vice President for Industrial Relations, Oconomowoc Canning Company, Oconomowoc, Wisconsin

Dr. Robert W. Glover, University of Texas, serves as Project Director and Chairman of the Work Group. Dr. Kenneth L. Deavers, USDA Economic Research Service, serves as Cochairman. Dr. James S. Holt provides the group with staff support. Efforts of these three beyond the regular call of AEWG membership are greatly appreciated.

The editors wish to thank all the many individuals and organizations whose contributions generated this report.

**Editors:**

Howard R. Rosenberg

John W. Mamer



## THE PRESENT SITUATION

A popular conception of an illegal alien in the United States is of a Mexican peasant toiling in the hot sun in the fields of the Southwest. Although there are no reliable statistics on the number of characteristics of illegal aliens in the United States, only about half are estimated to be Mexican. Many are employed in manufacturing, service, and construction. Most hired farmworkers in the United States are U.S. citizens or legally employed noncitizens. Nevertheless, observers both inside and outside agriculture concede that there are substantial and probably increasing numbers of persons illegally in the United States who are employed in the industry, mostly of Hispanic origin. They are employed in all commodities and all regions, though they are particularly significant in the Southwest and on the West Coast in seasonal employment in the fruit and vegetable industries.

This phenomenon is not new, particularly in the Southwest. This region, much of which was a part of Mexico until early in this century, has experienced regular migration of Mexicans with crops since the area became a major producer of labor-intensive agricultural commodities. Before 1924 there was no attempt to control this immigration. From 1942 until 1964 the Bracero Program sanctioned and, in fact, facilitated the employment of Mexican nationals in U.S. agriculture. Since the termination of the Bracero Program, the legal admission of non-immigrant temporary workers has occurred under the so-called H-2 provisions of the Immigration and Nationality Act of 1952. Admissions under this program have been relatively limited. Approximately 18,000 agriculture and woods workers were admitted in 1980, primarily for work on the Eastern Seaboard. Illegal immigration, however, appears to have increased substantially. Employment of illegal aliens is now common, even in the midwestern and mid-Atlantic states, and reaches into New England.

Most illegal aliens are employed in seasonal, rather than permanent, agricultural jobs. Many of these workers are probably regular migrants with permanent homes and small landholdings in northern Mexico. These migrants supplement meager local earnings with migratory farm work in the United States during their off-season. Others are probably persons intending to relocate to the United States who use seasonal, agricultural work to gain an economic foothold and later assimilate into the non-farm economy. Some are individuals whose primary employment consists of work in the United States periodically interspersed with periods of unemployment in their native country.

Regardless of the pattern of illegal immigration, it is universally accepted that its motive is economic. The prospective earnings from even low-wage, menial agricultural employment in the United States are much more than expected earnings in Mexico. For many, employment in the United States is indispensable to viability at home.

Labor performed by the alien work force is also important to the production of the commodities in which they work. In the absence of illegal workers, this work would have to be performed by domestic workers or, in the long run, mechanized. Price and/or imports of labor-intensive commodities would likely increase and production decrease. Nevertheless, the reliance of farmers on a large illegal work force has serious negative consequences in destabilizing the labor force, exploiting the alien workers, and undermining domestic labor standards.

Seasonal agricultural employment is unstable: the employment relationship is terminated each season and must be re-established the following year. Workers face a perennial job search and employers must recruit a new work force each year. If the sources of workers and jobs are widely separated, distance itself adds a further destabilizing factor. If the migratory work force enters and remains in the country illegally, moreover, instability of the employment relationship, both for employer and worker, is vastly increased.

Furthermore, the vulnerability of illegal workers to unscrupulous employers or third parties is substantial. The presence of illegal workers has been criticized on the grounds, among others, that workers are exploited by employers who do not observe required work and pay standards. While there are few documented cases of such abuses, persons illegally employed are obviously vulnerable. Their illegal status provides an opportunity for knowing employers to undercut labor standards and to gain a competitive advantage over most employers who do meet their responsibilities under U.S. laws and regulations governing the workplace.

Workers are also vulnerable to abuse from third parties. They frequently pay exorbitant prices for falsified credentials, transportation, and housing (which is often substandard and unsafe). They can be compelled under continuing threat of exposure to pay a portion of their earnings to "coyotes" who arrange for their entrance and employment. Illegal workers are reluctant to report crimes perpetrated on them or to seek needed medical and other social services.

While the results of these worker abuses are immediate, and sometimes visible, other important negative consequences of a significant illegal work force tend to be more long range and less visible.

Large numbers of unskilled workers available to agriculture reduce competitive pressure to upgrade labor standards and provide an incentive to undertake or expand economic activity in areas for which the domestic labor supply would be inadequate.

Such practices may also result in actual decline of labor standards; for example, crews of illegal workers may receive only minimum wages and benefits in direct competition with nearby employers of domestic crews for whom benefits and employment stabilizing measures are most costly. Even if labor standards do not actually decline, they may fail to improve as they otherwise might have because the labor market provides no payoff to employers who initiate improvements.

## POLICY GOALS

*A domestic labor force should be the goal of immigration and alien policy.* Granting alien workers unlimited access to the domestic labor market effectively puts domestic workers in competition with wages and working conditions of similarly skilled workers in other countries. Under such circumstances wages and labor standards for unskilled and semi-skilled work, for which an ample supply of alien labor apparently exists, would quickly be pushed down by foreign competition to minimum legislated levels, perhaps even creating competitive pressure to undercut these minimums. Neither employers, workers, nor the larger society are well served by encouraging the development of economic productive capacity which could not otherwise be sustained by the domestic labor force at or above minimum labor force standards.

*At a minimum, immigration and alien policy must establish and insure a legal work force.* The economic, social, political, and human costs of the present widespread violation of immigration laws are unacceptable. Inability to control national borders and, as a consequence, national labor policy, cannot be permitted to continue. All parties at interest—workers, employers, society as a whole, and often the illegal entrants themselves—are harmed by the existence of a large illegal labor force and an underground labor market.

Measures necessary for creating a legal labor force require some departures from present practice. However, they can be implemented without resulting in discrimination or infringement of personal freedom. Taken together, they should enhance domestic employment, productivity and economic activity, and prevent abuse.

## GENERAL RECOMMENDATIONS

The following recommendations, taken together, constitute an approach to resolution of both the immediate problems and underlying causes of the complex alien labor situation. While some specific elements by themselves may not be acceptable to individual interest groups, we feel that the package as a whole accomplishes the desired goal of a legal, productive agricultural work force while meeting the basic concerns of all parties involved. These recommendations are not offered individually, but together as a program. The individual elements, taken alone, may not accomplish the desired purposes and could have negative effects.

The Work Group's recommendations are summarized below and are amplified in the remainder of this paper.

(a) The incentive to enter this country illegally arises from economic, social, and political problems in the immigrant's home nation as well as the lure of higher

earnings in the United States. In particular, the economic conditions in parts of Mexico, from which many illegal entrants come, have made emigration almost a matter of human survival. For humanitarian as well as political and economic reasons, it is in the interest of the United States to assist other nations, particularly Mexico, in developing economic opportunities for citizens in their home countries.

(b) The significant attraction of potential economic gain from employment in the United States and the practical impossibility of sealing the nation's borders must be recognized. An essential element of any effective policy to reduce illegal immigration and mitigate its most immediate economic effects is to deny illegal aliens access to employment by (1) making it illegal to employ workers not entitled to work in the United States and (2) providing workers an effective but simple means to demonstrate eligibility for legal employment.

(c) Both current labor and immigration laws, and the new measures necessary to end current problems, must be *strictly and uniformly enforced*. Current levels of enforcement and weak penalties for violation apparently make the risk of apprehension for illegal border crossers, visa abusers, and others relatively low. Both enforcement of and penalties for violating laws to control illegal immigration and deny access to jobs must make the risk of apprehension and the cost of violation high, or these measures will be as ineffective as existing ones. To avoid undermining the competitive position of law-abiding employers and workers and to minimize economic dislocations and inefficiencies, this enforcement must be uniform across all jurisdictions and industries.

(d) It would be both impractical and inhumane to attempt now to uproot and expel those persons permanently settled in the United States who entered illegally. Those who have demonstrated that they are law abiding residents should be granted *legal status* immediately and without penalty, and provision made for them to achieve full citizenship eventually.

(e) The seasonal agricultural work force is thought to include a substantial number of migratory aliens seeking only temporary seasonal employment in the United States. These persons likely have little intention or desire to settle here permanently. The imposition of border controls and employer sanctions could rapidly and drastically reduce this pool of labor for migratory seasonal employment, with severe consequences for the agricultural industry. Amnesty provisions designed to avoid this labor market shock could have undesirable side effects, including the attraction of additional illegal entrants during the period when the amnesty proposals are under consideration by Congress. For this reason it appears likely that an amnesty program will apply only to workers continuously present in the United States (i.e., nonmigrants) before a date preceding the consideration of amnesty.

A transitional period will be necessary for the agricultural industry to develop and implement plans, undertake the capital investments, and accomplish the other changes necessary to adapt to a legal work force. To aid in this transition, and at the same time to end quickly the illegal status of aliens in the present labor force, a *transitional guestworker* program is recommended. This would provide immediate protection for employers and those workers

not seeking or not eligible for permanent resident status and would provide for termination of the program on a schedule and under conditions known in advance.

(f) Circumstances may arise, as they have in the past, where the domestic labor market will not provide enough seasonal workers to sustain production in given commodities and regions. It may be in the national interest to import workers for critical labor-intensive tasks in industries for which the only other option would be to limit production. Admission of supplementary alien labor for such tasks may be desirable under circumstances that protect domestic workers similarly employed. This is particularly important in agriculture, where availability of labor for a critical, high labor task in the production of a commodity in which labor demand is otherwise much lower, may effectively limit the volume of production that can be economically undertaken.

It is recommended that the provisions of the Immigration and Nationality Act of 1952 for the *temporary admission of alien labor* (the so-called "H-2" provisions) be used in such circumstances and that the regulations governing admission and employment of these workers be improved.

(g) Transition to a domestic labor force will greatly intensify demands on the domestic agricultural labor market. *Improvement of domestic labor market mechanisms* will aid in the transition to a domestic labor force and will increase the employment and productivity of domestic workers and the efficiency of domestic industry. While improving the efficiency of the domestic labor market is a desirable objective under any circumstances, it is particularly critical given the severe stress that transition to a domestic labor force will entail. It is recommended that both growers' and workers' vocational market skills and operation of domestic migratory labor markets be upgraded through (1) improving Employment Service operations; (2) facilitating the education of labor contractors, and (3) promoting the establishment of organizations by growers, farmworker organizations, and others to assist in the employment and efficient utilization of the domestic work force.

The following section elaborates on the general recommendations above that are particularly relevant to agriculture and farmworkers.



## DETAILED RECOMMENDATIONS

### Amnesty

It is recommended that aliens presently residing and working in the United States, who have demonstrated a history as law abiding residents and who wish to remain here, be permitted to identify themselves without penalty and initiate procedures toward attaining permanent resident status and eventual citizenship. Those who have been in the United States for a long period should not be subjected to an additional waiting period before acquiring permanent resident status and a legal right to work. It is recommended that those aliens who can demonstrate five years or more of continuous residence and employment before 1980 be permitted to apply for permanent resident status immediately. Persons present before 1980 with less than five years of continuous employment and residence should be permitted to apply for permanent resident status at the end of five years of residence. It is further recommended that persons who have been alien migrant workers and/or guestworkers and/or H-2 workers for some period of time be given preference for immigrant visas and permanent resident status if they desire to immigrate.

We recognize that amnesty has little relevance to workers who do not wish to remain in the United States. Strict border enforcement and sanctions against employing aliens are likely to reduce greatly, if not eliminate, the alien migratory labor supply. A temporary, transitional guestworker program, as recommended in this paper, would prevent the rapid and probably severe repercussions that sudden disappearance of migratory aliens would have on important segments of agriculture.

### Worker Identification

Effective elimination of the economic incentive to illegal immigration depends on the application of sanctions to employers who knowingly employ illegal aliens. Effective employer sanctions, in turn, require a simple, quick means for workers to demonstrate their eligibility for employment as well as a means for employers to verify workers' legal status. A worker identification system is the key to the feasibility and effectiveness of employer sanctions and thus of the entire mechanism to discourage illegal immigration.

The mechanisms and procedures for worker identification are of particular concern to minority agricultural workers, who risk discrimination or outright denial of job opportunities if a simple identification procedure is not applied uniformly to all

workers. Employers, particularly those employing day haul and field hire workers, also require a simple, safe test of worker legality. It is recommended that during the guestworker transition period, a renewable counterfeit-resistant Social Security card with a photograph be issued upon satisfactory demonstration of citizenship or legal authorization to be employed, that this card be sufficient proof of the right to employment, and that all workers be required to show such cards before being employed.

Employers are now required to obtain Social Security numbers for most of their employees, and extending this requirement to all should not present insurmountable difficulties to any employer or worker. It appears to be the least intrusive means of controlling illegal employment. Many states now require a photograph on the driver's license, and it has proven technically and economically feasible to issue large numbers of cards over a period of years.

Various proposals have been made for more comprehensive identification and work authorization systems, including requiring identification numbers or Social Security numbers to be called in to a central data bank and receiving authorization before hiring can take place. While such systems would undoubtedly be feasible for employers of few workers and those with fixed site employment of relatively long duration, it might create severe difficulties for agricultural employers hiring large numbers of workers "on the spot" when needed or for employment of short duration. While only a small proportion of agricultural employment is of this nature, it is precisely in this sector that illegal immigration has presented its greatest problems.

During the phase-in of new Social Security cards, it is recommended that relatively simple procedures be established to provide temporary identification for domestic workers. Some procedures for self or third party identification through the Employment Service would be appropriate. This measure is consistent with the recommendation to grant guestworker visas or permanent resident status to aliens in the labor force during initiation of the program.

### Employer Sanctions and Enforcement Activities

Enforcement procedures and penalties for violators will be the key to the effectiveness of measures to control access of illegal aliens to jobs. These mechanisms and uniformity of enforcement will also be key ingredients in creating respect for and compliance with the new law.

In an industry as highly competitive as agriculture, lax enforcement and/or low penalties for violators can induce some employers to take the risk of violation. This effective undercutting of law-abiding employers, if sufficiently widespread, can virtually force them to either break the law themselves or abandon production. Enforcement of prohibitions against employment of illegal aliens must be such that both the probability and cost of apprehension are high enough to induce employers and illegal aliens to not take the risk.

Both existing labor standards and new procedures for certifying the need for supplemental foreign labor must be strictly and uniformly enforced across all industries and geographic areas. Otherwise, economic dislocations will result as production is skewed to areas with more lax certification procedures and labor standards enforcement. Both workers and employers in areas with more stringent enforcement will suffer through loss of employment and production opportunities. Local and state enforcements of labor standards are notorious for their vulnerability to political pressure from strong local interests. If federal law is to be made in this arena, as it clearly must be, the federal government has the obligation to protect producers in all jurisdictions from inadequate enforcement in competing areas. While this does not necessarily imply federal enforcement, it does imply strong federal monitoring and surveillance of enforcement activity.

Emphasis of enforcement must be on apprehension of hard core violators and the most serious violations. The measures by which the productivity of the enforcement activity is evaluated must reflect that emphasis. They should not result in incentives to generate large numbers of violations which are largely technical in nature and of little consequence to the welfare of workers. Similarly, they should be geared toward apprehending those not using the prescribed procedures rather than toward frequent surveillance or harassment of those who do.

Both the productivity of and respect for enforcement will be enhanced by eliminating duplicate and overlapping inspections and inconsistent regulations among the many applicable to agricultural work. Ideally, this might be accomplished by concentrating responsibility for enforcement of all regulations in a single agency. Furthermore, the emphasis of enforcement should be on producing compliance and, only if that fails, punishment. Particularly at the outset, significant enforcement resources should be devoted to educating employers about how to comply with regulations. Opportunities for pre-inspections where violations can be brought to light and corrected without penalty would be a logical component of the educational effort.

Enforcement activities lead inevitably to an adversarial relationship between the agents and the subjects of enforcement. The experience of the U.S. Employment Service in agricultural placement activity has been one recent lesson in the futility of expecting the same agency to be both a provider of service and a policeman. It is recommended that the responsibility for assisting growers in recruitment and for certifying recruitment and training programs, plus the need for supplementary labor if it arises, be vested in a agency separate from the one responsible for enforcement of labor standards. In the case of agriculture, consideration might be given to placing responsibility for service functions in USDA and enforcement activities in USDL.

### The Temporary Guestworker Program

The available evidence, though largely anecdotal, suggests that a significant component of the illegal work force in agriculture is of Mexican nationals who migrate to the United States temporarily to perform seasonal work here with no intention of remaining in this country. Theirs is probably the preponderant pattern of alien employment in agriculture, and growers in some regions and in some commodities are heavily dependent on alien migrants to perform such essential labor intensive seasonal tasks as harvesting. Furthermore, there may be substantial turnover and a significant influx of new entrants into this stream in any given year, as is the case with the domestic migratory labor force.

The immediate impact of strict controls and employer sanctions on this alien migratory labor supply will depend in part on the provisions of an amnesty program and in part on the composition and behavior of the alien labor force employed in agriculture. Two scenarios are possible:

- (1) If the migratory labor force is stable, with a high proportion of immigrants in any particular year returning the next year, and if amnesty provisions permit these workers to achieve legal status, maintain permanent residence in their homeland, and enter and leave the United States at will to accept employment, then the alien migratory labor supply will likely decrease only gradually as workers drop out of the migratory stream, and the transition to a domestic labor force supplemented by an H-2 temporary program can occur in a gradual and orderly fashion.
- (2) If, however, it obtains (a) that an amnesty program will apply only to aliens who can demonstrate a history of residence and employment in the United States before a date preceding the consideration of amnesty, and/or (b) that amnesty will not be applicable to aliens maintaining a permanent residence

outside the United States who seek to enter the U.S. only for periods of temporary employment, and/or (c) that considerable instability and therefore a considerable influx of new entrants to the alien migratory labor force will prevail in any given year, then strict border controls and employment sanctions could significantly and rapidly reduce the supply of seasonal migratory labor available to U.S. agriculture.

A small scale temporary guestworker program would not prevent this labor market shock. Although reliable data on numbers of aliens presently employed in agriculture are not available, virtually all observers agree that the numbers are significantly greater than the number of workers included in some present guestworker programs. Furthermore, there is no guarantee that all or even any of these proposed guestworkers would be employed in agriculture.

We recognize the necessity of imposing stringent conditions on admissions and employment of temporary farm labor to protect U.S. workers. However, the transition to a domestic work force, even one supplemented by temporary alien H-2 workers, will be difficult for the agricultural industry to make quickly. Wage standards and working conditions will have to be upgraded in many areas, capital investments in housing and other facilities will have to be made, and recruitment, training, and other labor market programs will have to be developed and put in place by growers who have been largely dependent on a walk-in labor supply. It is necessary to provide a transition period for the agricultural industry to adapt to these new standards and develop alternative domestic labor sources. The sudden withdrawal of a significant component of the industry's labor force is in the best interests of neither the industry nor the nation. A period of stability and predictability of short-run labor supply will provide the best environment for growers to develop strategies to meet changing labor market conditions.

The Work Group recommends a *temporary guestworker program* as a short-term transitional mechanism. Its purpose would be to provide time for legalizing part of the present illegal work force, developing intelligence on the magnitude, location, and employment patterns of this work force, and establishing a fixed schedule, known in advance, for transition to a legal work force.

The general outline of such a transitional plan might be as follows:

During the initial year growers would be granted certification to employ as many work hours of guestworker labor as they request in any given period, up to the certified number (or a percentage) of labor

hours they used in the same period of the previous year. Illegal aliens presently employed but not eligible for or desirous of permanent resident status under amnesty provisions would receive temporary guestworker visas which would expire at the end of the transitional guestworker program. This move would immediately bring employers and aliens into compliance with the law. It would require little or no adjustment except to bring employment practices into conformity with existing laws in those limited instances where they are not already. It would yield accurate data on the number, location and period of employment of the current alien population. It would provide the basis for assessing the magnitude and locations of adjustment problems and planning for assistance in alleviating them.

Employers who fail to comply would be subjected to the penalties for hiring illegal aliens. To enlarge the incentive for compliance, violators could also be denied certification of guestworkers under the transitional program and access to the regular H-2 certification procedures for a specified period.

This temporary guestworker program should include at its inception a mechanism and schedule for its termination. It is recommended that the program be gradually phased out through annual percentage reductions in growers' certifications for guestworkers. If the transition program were to last five years, for example, each employer's guestworker certification would be reduced by 20 percent annually.

During the transition period employers would have to adjust their production and employment plans to accommodate the guestworker reductions. Growers would change production patterns and/or increase employment of U.S. workers. The transition program should be flexible enough so that reducing the employment of guestworkers below the maximum permissible in a given season would not reduce eligibility for certification the following year. In effect, the employer would be certified at the outset of the program for a specified number of guestworkers for each year of the program. The only basis on which that certification could be prematurely reduced would be the employment of illegal aliens.

If at any time during the transition process a grower were not able to obtain sufficient domestic workers, application for H-2 certification could be made by meeting the requirements for that program. Since requirements for H-2 certification are considerably more stringent than for guestworkers, the move to H-2 workers would have to be complete (i.e., all alien labor needs would have to be met under the H-2 program) and the employer's eligibility for participation in the guestworker program would terminate.



This transition program would require no special enforcement mechanisms or regulations. It would have a specified termination built in. Most importantly, it would provide a mechanism for employers' immediate compliance and gradual adjustment to the domestic labor market.

### Supplementary Foreign Worker Admission

There are likely to be instances where employers take reasonable and prudent measures to obtain domestic workers and are unable to do so. This circumstance is particularly probable in agriculture, where large variations in seasonal labor demand can occur in rural areas with a limited indigenous labor force. Many illegal aliens are now employed in such seasonal jobs. Their availability has led to the development of production capacity that would undoubtedly not have existed without them.

These job opportunities may not be completely filled by domestic migrants. Furthermore, some would advocate that domestic national labor policy should pursue the end of migratory work as an essential means of economic survival. Yet it may not be in the long-term best interest of the nation to limit domestic production of seasonally labor-intensive commodities to those levels which can be sustained by a local temporary labor supply.

The Immigration and Nationality Act of 1952 contains provisions (so-called "H-2" provisions) for the temporary admission of aliens to work in the United States. At present the number of workers admitted under this program is relatively low and only about half are employed in agriculture. However, a plentiful supply of illegal migrants has eliminated incentives for many producers to seek H-2 labor. Ending access to illegal aliens is likely to result in additional instances in which employers are unable to obtain sufficient temporary seasonal labor in the domestic labor market.

The H-2 legislation and regulations establish criteria for determining when a shortage of domestic labor exists and specify conditions under which supplementary foreign labor may be admitted without bringing "adverse effects" on domestic workers. This program provides a legal mechanism for supplementing the labor force which facilitates higher levels of agricultural production and employment of permanent and long-term seasonal domestic workers than would otherwise exist. It is recommended that this program be continued, with some procedural modifications, to provide supplementary workers for seasonal and temporary jobs for which the domestic labor supply is insufficient.

A basic tenet of this program should be the temporary admission of aliens for temporary or seasonal employment. Its purpose is to facilitate expanded agricultural production and higher levels of employment for U.S. workers in long-term seasonal and year-round jobs in production, processing, and distribution. It is recognized that the admission of temporary alien labor affects the wages and working conditions of domestic workers in similar employment. Therefore, strict control of the terms and conditions under which alien labor is admitted and guaranteed access of domestic workers to these jobs are essential to a supplementary foreign labor program.

Modifications in H-2 regulations and procedures are needed to make the program both workable for growers and considerate of domestic workers. While this document cannot discuss H-2 regulations in detail, it can suggest some basic guidelines for revised H-2 procedures:

- (1) All wages and other benefits provided to H-2 workers should also be provided to U.S. workers employed in the same jobs. The provisions permitting employment of alien workers should not provide a cost incentive for the employment of H-2 workers. Similarly, it should not impose an economic penalty on employers of H-2 workers where the unavailability of sufficient U.S. workers has been demonstrated.
- (2) Standards for job offers and recruitment procedures which must be met to certify a shortage of U.S. workers for temporary agricultural jobs should not be more stringent than those required for permanent admission of aliens for employment. Appropriate criteria should be specified for recruiting seasonal workers in the local labor market, defined largely by distance or population factors. At the same time, both present and prospective domestic migratory labor sources must be assured access to these jobs.
- (3) It has been observed that earnings of skilled domestic and alien workers in seasonal agricultural jobs are often attractive, but that unskilled domestic workers are sometimes unable to attain the proficiency necessary to earn at similar levels. To assure meaningful access of domestic workers to jobs for which labor is in short supply and to maximize effectiveness of domestic recruitment, training should be offered for at least a specified percentage of the jobs for which certification is being sought. This training could be provided by individual growers, grower associations, farmworker organizations, or other agencies.

(4) In the absence of higher standards, the wage rate in jobs for which foreign workers are admitted could be pushed down to the minimum wage by market forces. Wage rates of domestic workers must be protected in the certification standards for foreign worker admission. The wage rate which workers must be offered by employers seeking certification for foreign labor should be no less than the prevailing wage for like or similar agricultural work in the area where the foreign workers are to be employed and no less than a fixed percentage above the minimum wage rate established in the Fair Labor Standards Act (FLSA). The employability of U.S. workers unable to attain sufficient production at prevailing piece rates to earn the required minimum wage should be protected by provisions that permit their continued employment at not less than the FLSA minimum.

It is recognized that producers operating in a competitive market will have little incentive to establish labor standards (pay, fringe benefits, and working conditions) for U.S. workers substantially more costly than those required to qualify for foreign workers. Thus, the conditions governing admission of aliens into certain occupations will greatly affect the employment of domestic workers in the same markets. Ripple effects of a supplementary labor program are inevitable. If labor standards are set sufficiently high and the scarcity of U.S. workers for these jobs is adequately established, however, the supplementary labor program will be beneficial on balance.

Mr. MAZZOLI. Mr. Henry J. Voss, member of the executive committee of the Farm Bureau, you are recognized.

**TESTIMONY OF HENRY J. VOSS, MEMBER, EXECUTIVE  
COMMITTEE, AMERICAN FARM BUREAU**

Mr. Voss. Thank you, Chairman Mazzoli.

I believe you have my complete statement.

I appear here today as a producer of fruits and vegetables, but also as president of the American Farm Bureau and a spokesman for the 3-million-member family of the American Farm Bureau Federation, for which I serve as a member of the executive committee.

We recognize as a matter of basic policy the Federal Government must regulate and control who comes into this country, how many; that the control of immigration, both legal and illegal, has gotten out of hand; that Congress must take steps to bring it under control but not at the expense of creating a disaster in agriculture.

We estimate that some 300,000 undocumented workers are currently employed on our farms and ranches representing about 15 percent of the hired farm work force, though only about 7 percent of the total aliens employed in this country.

It is simply not true that most agricultural employers employ illegals because they are a source of cheap labor. They employ them because they are available, because they are highly productive, and because they have found over the years that so long as Americans have the benefit of various social protection programs, they are not willing to leave their places of residence and to go to the rural areas to take seasonal jobs.

Although this committee has made a good start in providing for a workable temporary foreign worker program in section 211, that is intended to provide for the special needs of agriculture, we have concluded after careful consideration that section 211 in this bill is not adequate and will not accomplish that goal.

It must be borne in mind that a great many agricultural employers have become dependent upon undocumented workers. The enactment of the legislation before us creates great uncertainties for agriculture as to the future source of the seasonal labor that we must employ.

We remain opposed to employer sanctions as a matter of principle. We recommend that section 101 be amended so as to reduce somewhat the regulatory burden and the severity of sanctions on employers such as removing the jail sentences, make the recruiters and referrers of workers responsible for documentation and record-keeping, and settling the documentation question once and for all by requiring the issuance of a new tamper-proof, counterfeit-proof social security card.

We have made several specific suggestions that we think are needed to make section 211 a workable program, including retention of the final regulatory authority in the hands of the Attorney General, providing for a de novo hearing as a part of the expedited review of a certification request, and a workable definition of the term labor dispute, a problem that requires the attention of this committee to avoid easily closing off the program to employers by



two or three people at a place of employment. We have attached suggested language.

We ask that a new subsection (g) be added to section 211 to authorize the development of a 5-year transition program during which time, on a phased-out basis, agricultural employers could continue hiring those who choose not to apply for or do not qualify for legalization. We are attaching suggested legislation.

We are convinced that the H-2 program, even if improved as we have recommended, would not adequately meet the needs of agricultural employers in the highly seasonal labor-intensive employment areas. Accordingly, we will support additional legislation, either as a part of this bill or as an addition to this bill, to provide for a more flexible foreign seasonal worker program that is not employer- or commodity-specific and that provides for less burdensome regulatory procedures.

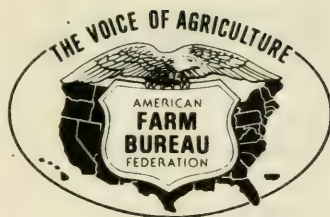
I cite here that in California we find that 35,000 jobs in support industries are related to every billion dollars of agricultural income. And I think that the dislocation of the uncertainty that may be involved, without some program that agriculture can feel confident will meet that need, will go far beyond the agricultural community.

And lastly, we urge that the bill be amended to require that the INS obtain a properly executed search warrant prior to entering a farm or other agricultural operation.

Thank you.

Mr. MAZZOLI. Thank you very much, Mr. Voss.

[The complete statement follows:]



## ★ FARM BUREAU ★

★ ★ the nation's largest general farm organization ★ ★

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION  
TO THE IMMIGRATION SUBCOMMITTEE, HOUSE JUDICIARY COMMITTEE  
RE: H.R. 1510 IMMIGRATION REFORM AND CONTROL ACT OF 1983

March 10, 1983

Presented by Henry J. Voss  
President, California Farm Bureau Federation

American Farm Bureau Federation  
Washington Office — 600 Maryland Ave., SW, Washington, DC 20024. Phone: (202) 484-2222

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The American Farm Bureau Federation is the nation's largest general farm organization, representing more than three million families in 48 states and Puerto Rico who are members of more than 2,800 county Farm Bureaus, and who have joined voluntarily and pay dues annually to finance the organization. We estimate that at least 85 percent of the farmers and ranchers in this country are members.

Farm Bureau positions on public issues are developed from the grass roots up through the ranks of the organization with approximately a third of the voting members participating in an extensive policy discussion and development process. Because of the nature and scope of that process, we feel confident that our adopted policies represent the majority thinking of farmers and ranchers in this country.

#### FARM BUREAU POLICY REVIEW

In January the State Farm Bureau voting delegates who participated in the 64th annual meeting of the American Farm Bureau Federation, adopted an extensive statement on immigration policies, calling upon Congress to: (1) analyze and take action to reevaluate and reestablish new quotas on immigration; (2) require careful screening of those admitted to this country so as to reject criminals or other undesirables; (3) provide for better control over the flow of illegal aliens into the country; (4) deny the benefits of social programs to illegals; (5) improve procedures to keep better track of those admitted legally but do not leave on a timely basis; (6) provide better control over mass entry of refugees; (7) restrict the ability of illegal aliens to take advantage of our political system; and (8) establish less cumbersome and more prompt legal procedures for the deportation of those who have no right to be in this country.

The policy goes on to state that we are opposed to the requirement of any national identity card, taking the position that the only identification that should be required for employment is the Social Security card. We are opposed in principle to the imposition of criminal sanctions on employers who hire undocumented aliens; and we are opposed to blanket amnesty of illegal aliens already in this country; but recognize the need for a controlled or limited amnesty for those who have lived here over a period of years, have no criminal record, are capable of speaking and writing basic English and who meet other such minimum requirements. Such limited amnesty should be a part of an overall plan to greatly reduce illegal immigration in the future.



Furthermore, the Farm Bureau position is that if Congress changes the immigration law in such a way as to adversely affect the present farm labor pool, "it is imperative to provide workable temporary foreign worker programs for agriculture."

"These programs must give reasonable assurance that such workers can be recruited on a timely basis when neither employers nor the employment service can find U.S. workers who are willing, capable and available in the area of need."

"The programs must be sufficiently flexible to provide for the labor needs of agricultural employers that produce highly seasonal, labor intensive commodities."

"Such programs should also provide for employment of refugees and other undocumented workers already here who seek agricultural work."

Finally, Farm Bureau policy asks that laws governing the apprehension of illegal aliens "should be carried out uniformly and equally in all industries. Entry to farms and agricultural operations should be permitted only when immigration officials hold properly executed warrants which name individuals that are being sought..."

It is clear from this review of Farm Bureau policy that our members and leaders have given considerable thought to the immigration and naturalization policies of this country. We recognize that it is a prime responsibility of the federal government to control the borders of our country, and we share the concern of most Americans that changes are needed to restore and insure that control. It is as obvious to us as to others that illegal entries have gotten out of control. We believe that as a matter of basic policy, the federal government must regulate and control who comes into this country and how many. We have no doubt that hundreds of millions of people in other countries would like to emigrate to this country to share our liberties and the fruits of our capitalist economy; but there is a limit to our ability to accommodate them.

#### AGRICULTURE AND ALIEN WORKERS

A great many farmers and ranchers have for many years been closely associated with aliens coming to this country, either legally or illegally, to work and to enjoy our way of life. We have come to have a high regard for them. We find them highly motivated, eager to work, to save, and to be a productive force in our industry. Many come here at great personal sacrifice to escape abject poverty and tyranny in countries that have degenerated into socialism or military dictatorships.

Because of the ready availability of such persons and because Americans are not willing, able and available to take a great many of the seasonal jobs in agriculture, our conservative estimate is that

some 300,000 undocumented workers are currently employed on our farms and ranches, representing about 15 percent of the hired farm workforce, though probably only 7 percent of the total of such workers employed in this country.

It is simply not true that most agricultural employers want to employ illegal aliens because it is a source of cheap labor. They employ them because they are available, because they are highly productive and because they have found over the years that so long as Americans have the benefit of various social protection programs they are not willing to leave their places of residence, go to rural areas and take seasonal jobs.

#### EFFORTS DURING 97th CONGRESS

During the past two years, we have attempted to work with this Committee, its staff, with the Senate Committee and its staff, with representatives of the Departments of Justice, Agriculture and Labor, and with other members of Congress in fashioning immigration reform legislation that would not create a disastrous situation for a major segment of American agriculture.

We opposed and continue to oppose the employer sanction provisions of the bill now before this Committee and placed major emphasis on Section 211, which seeks to provide for improved procedures to admit nonimmigrants to take seasonal jobs in agriculture, where it can be demonstrated that Americans are not willing, able and available to perform such work.

Although this Subcommittee accepted a number of our recommendations for changes in the section originally proposed, with the goal of achieving a seasonal worker program that would have some reasonable chance of being workable, we concluded, after careful consideration, that the section adopted by the full Committee is inadequate and will not accomplish that goal. In further consideration of the radical amendments posed by the House Education and Labor Committee, we concluded that we had no choice but to mount an all-out grass roots campaign to defeat the bill in the House.

#### INDUSTRY-WIDE REVIEW

For the past several weeks, we have been meeting with representatives of a number of agricultural producer groups from the major areas of the country to analyze the legislation being proposed in both houses, and to develop proposals and strategy to achieve a workable foreign guest worker or seasonal program for agriculture. We are more concerned than ever that the proposals now before this Committee, if they are not improved and supplemented, will result in a chaotic and disastrous situation in major segments of agriculture.

It needs to be borne in mind that a great many agricultural employers have become dependent upon undocumented workers. The enactment of the legislation before us creates great uncertainties for agriculture. We do not know, nor does anyone, exactly how many such workers are currently employed in agriculture, where they are employed, how many would apply for or would qualify for legalization, or how many who achieve legal status would choose to continue working on farms and ranches.

The very nature of agricultural production, particularly of the fruits, vegetables and other crops that require large numbers of seasonal field workers, is that the required labor must be available when nature dictates, not when some government official in Washington, D.C., or some regional office of the Department of Labor decides to allow access to the needed workers.

#### SPECIFIC RECOMMENDATIONS

With those and other considerations in mind, we want to make the following specific recommendations:

1. That Section 101 be amended to:

(a) remove the jail sentences;

(b) remove the penalties for failure to keep a record of worker identification and documentation, since a loss of presumption of good faith compliance is sufficient incentive to keep such records;

(c) provide that where workers are recruited and referred to employers by labor unions or by the Federal/State Employment Service, the burden of establishing eligibility to work, examining the documentation and keeping a record of documentation be the responsibility of the union or the Employment Service, not the employer. This would eliminate unnecessary duplication, relieve some of the excessive burden on employers, and place clear responsibility on the entity that recruits and refers the workers. We have heard of instances in the past, where employers were seeking certification by the Department of Labor to employ temporary foreign workers under the H-2 provision of the Act, in which the Employment Service referred undocumented workers to the employer to demonstrate availability of domestic workers; and

(d) eliminate the uncertainty of documentation now provided in this section by requiring that within three years the Social Security Administration be required to issue a new Social Security card to all who seek employment. The new card should be issued under strict documentation requirements and should be as near tamper-proof and as difficult to counterfeit as technically feasible. That should be the only worker identification that would have to be examined by an employer.



2. That Section 211 be amended to:

(a) provide that the Attorney General retain final regulatory authority, in consultation with the Secretary of Labor and the Secretary of Agriculture, so far as Section 211(a) is concerned. While we agree that the regulations should be developed through the initiative of the Secretary of Labor, we think it is important that the Secretary of Agriculture be a full participant in the process and that the final determination be made by the Attorney General, as provided in the current act.

(b) provide for a workable definition of "labor dispute." Under the present definition of the Department of Labor and the Immigration and Naturalization Service, any two or more persons at a jobsite can create a labor dispute. This is a built-in situation in this bill in which employers could easily and unjustifiably be closed off from access to the H-2 program. We are attaching to this statement some suggested language for such a definition.

(c) add a new subsection (g), providing for a five-year transition program to assist agricultural employers in getting away from the employment of undocumented workers on a gradual basis and to avoid any crisis situation that is likely to develop if the shift is required to take place too rapidly. We are attaching to this statement some suggested language for this new subsection. It encompasses the concept of requiring those who employ seasonal agricultural workers to register the first year of the program; to supply information on the number of seasonal workers they employed the previous year and the number they expect to employ during the year of registration. The Attorney General would be given the authority to issue agricultural work permits to undocumented aliens who have been employed in agriculture, who do not wish to apply for legalization or who cannot qualify for legalization.

During the first year of the program, employers could employ such permit-holders to fill their total need for seasonal workers. During the second year, an employer would be restricted no more than 80 percent of the permit-holders employed during the first year, the third year no more than 60 percent and reaching zero the fifth year. Starting the second year, an employer would need to recruit at least 20 percent of his seasonal workforce from the domestic workforce, from those who had been granted legalization, or from the H-2 program. This percentage increases to 100 percent after five years. At all times, employers would be required to pay the same wages and benefits and provide the same worker protections to the permit-holders as to any other workers; and when the employment of H-2 workers commences for any employer, he would be required to offer non H-2 workers the same job offer and protections as required by H-2 regulations.

(d) provide for a de novo administrative hearing as a part of the procedure for expedited review, where the Secretary has denied certification to an employer who has requested approval to recruit and employ H-2 workers.

3. As we have previously stated, we are convinced that the H-2 program, even if improved as we have recommended, would not be adequate to meet the needs of agricultural employers in the areas of highly seasonal, labor-intensive employment. Accordingly, we will support additional legislation, either as a separate bill or as an addition to this bill, to provide for a more flexible foreign seasonal worker program that is not employer or commodity-specific, and that provides for less burdensome regulatory procedures. This program would provide that agricultural employers could petition the Attorney General on the need for additional seasonal workers, and the Attorney General would be given authority to issue special visas for nonimmigrants to be employed in agriculture, with monthly or annual numerical limitations. The Secretary of Agriculture and the Secretary of Labor would be consulted in determining the need for such additional workers in the various states or regions of the country.

This additional program would also provide that no such workers could be recruited or employed if qualified American citizens or documented aliens are available at the time and place needed and that the foreign workers would have the same basic protections as are guaranteed to American or documented workers. We are not asking for a program that would provide for a pool of cheap labor.

4. We urge that the bill be amended to incorporate a provision requiring the INS to obtain a properly executed search warrant prior to entering a farm or other agricultural operation. Currently, INS agents must obtain a warrant before entering any place of business with the exception of farms or open fields. This exception should not be allowed to continue. It discriminates against farmers and has resulted in a situation in which 50 percent of the illegal aliens taken into custody come from farms; whereas it is estimated that only 7 percent of illegals employed in this country are employed in agriculture.

5. It is important that Section 214 of the Act be amended to provide for federal preemption. No state should be permitted to interfere with the operation of the H-2 or other seasonal worker program.

We appreciate the opportunity to present our views and urge this Committee to give full and careful consideration to our recommendations. We agree that the Immigration and Naturalization Act needs to be reformed and updated to gain better control over our national borders; but it must not be done in such a way as to create a disastrous situation in agriculture.

## ATTACHMENT A

## TRANSITION PROGRAM - SECTION 211(g)

(g) the Attorney General, in consultation with the Secretary of Labor and the Secretary of Agriculture, shall promulgate rules and regulations for the implementation of a transition program to last no more than five years from the effective date of the Act, to assist agricultural employers and seasonal agricultural workers in shifting from the employment of undocumented workers to the employment of United States citizens or to temporary foreign workers as provided in this Act. Such rules and regulations shall provide:

(1) for the registration of employers of seasonal agricultural workers during the first year of the transition program, requiring submission of the basic information on the number of seasonal agricultural workers employed the previous year and the anticipated requirements for the year,

(2) for the issuance of work permits for employment in agriculture during the transition period to undocumented workers who do not wish to apply for legalization under this Act, or who may not qualify for legalization,

(3) that during the first year of the transition program, an agricultural employer who registers under this section may employ workers holding such permits to fill his full requirement for seasonal workers,

(4) that during the second year and each succeeding year, no agricultural employer shall employ more than 80 percent of the number of permit-holders he employed during the previous year, with an additional 20 percent reduction each year until the entitlement to employ such workers reaches zero at the end of five years,

(5) that starting with the second year of the transition program, the need for seasonal agricultural workers shall be filled by the employment of United States citizens, aliens who achieve legalization under this Act, or through the certification of temporary foreign workers as provided in this section,

(6) that all workers employed under the transition program shall be fully protected by all requisite federal and state laws and regulations regulating the employment of migrant and seasonal farm workers, and

(7) that when an employer recruits and employs one or more non-immigrant seasonal agricultural workers as provided in this section, all seasonal workers employed by such employers shall be employed under the same terms, conditions and protection as provided in this section or by any regulation emanating therefrom.



## ATTACHMENT B

## DEFINITION OF "LABOR DISPUTE"

A labor dispute shall be deemed to exist at any job site when 50 percent or more of the bona fide agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions.

A labor dispute shall be deemed to have terminated when less than 50 percent of the agricultural employees of the employer remain on strike; but in no case shall a labor dispute survive the term of an employee's term of employment.

A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met.

Upon application of any interested party, the Secretary of Labor shall, within 3 days where possible, but not more than 5 days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

Mr. MAZZOLI. Now Mr. Williams, you are recognized.

Mr. WILLIAMS. Thank you, Mr. Chairman.

I will be brief. I am mindful you have said our written testimony will be included in the record.

I would ask if there are questions that we may have the opportunity to expand upon those in written statements if necessary.

Mr. MAZZOLI. Always.

Mr. WILLIAMS. Thank you very much.

My name is Russell Williams. I am president of a group called Agricultural Producers, which is an association of citrus and avocado growers in packinghouses in California and Arizona. We represent approximately 12,000 growers who employ someplace between 25 and 30,000 workers in those two industries in those two States at peak employment.

Mr. Chairman, I cannot ignore your comment during the previous panel with Mr. Donahue as to your frustration. We all appear here, we all make our comments, we all reconfirm our commitment to the legislation, and we all proceed to rip it apart.

I will make a similar type of comment. I hope you understand my sincerity when I say I think it is essential that we do pass legislation. I am personally of the opinion that it is essential that something be done this year, for pragmatic considerations from an agricultural standpoint as well as considerations of national policy.

H.R. 1510, Mr. Chairman, as you are aware, does not attempt to rationalize the phenomenon of U.S. unemployment and the continued involvement of foreign workers in our economy. It does, however, fundamentally shift the burden for illegal immigration from the employee to the employer.

You have heard from Mr. Hale and others at the table this morning about a proposal for a seasonal foreign worker or open market program. We feel that proposal complementing the H-2 program as this bill or other legislation may modify it, would be

more responsive and therefore more workable with respect to agriculture in the West.

Regarding the H-2 program, we generally believe the existing statutory authority for the administration of that program should continue. However, we do believe certain legislative modifications are necessary.

We strongly recommend that the subcommittee revisit and readopt an amendment it and the Senate approved during the 97th Congress, which provides for the Attorney General's approval, following consultation with both the Departments of Agriculture and Labor, of all the regulations necessary to implement the provisions of an agricultural H-2 program.

We feel that a balanced regulatory structure, cognizant of and responsive to the needs of the agricultural community, is essential to have a workable H-2 program. The Department of Agriculture must have a regular and substantial involvement in the development of the regulations, for it is USDA which must attempt to represent the viewpoint of agriculture within the Federal bureaucracy.

The definition, as you have heard, of a labor dispute is basic to the H-2 certification process. I don't think any of us here at the table or those we represent in the field intend to threaten any legitimate labor action, but rather to avoid any frivolous disruption of the certification process. And we, as well as the others, have submitted a proposal in our written statement on this matter.

Mr. Chairman, you have been particularly understanding of our concerns regarding the need for an expedited review of the denial of a certification. We recommend to the subcommittee that they do adopt a provision allowing for a de novo hearing.

The proposed Immigration Reform and Control Act is intended to comprehensively reform this country's immigration law. We believe it would be inconsistent in its intent if it did not clearly preempt State and local law.

While we, as well as the others, note our philosophical disagreement with the legislation insofar as it provides for civil and criminal sanctions, we do take cognizance of that as an element of a comprehensive balanced reform effort which includes a timely response supplemental farm work program. We do not feel it appropriate for a person to be held criminally liable for mere employment.

The imposition of sanctions for the hiring of an individual without a single, simple, practical and rational system to identify those who are legally employable does place an impossible compliance burden on an employer. We believe the social security card, properly modified, should be the sole document for such identification.

We recommended, in addition to those provisions of H.R. 1510, which provided for permanent and temporary legalized status categories, another category, to make available a transitional status for those who do not seek or may not otherwise qualify for adjustment.

You have heard about the USDA's agricultural employment work group's suggestion for a transitional plan. We endorse that as both compassionate in its treatment of those who may not otherwise be adjustable, and also logical in that it will provide some easing of the dislocation that is going to follow enactment of this legislation.

Mr. Chairman, members of the committee, I thank you for your attention. We appreciate our opportunity to express our views.

Mr. MAZZOLI. Thank you very much, gentlemen. We appreciate your statements.

[The complete statement follows:]



STATEMENT OF  
 RUSSELL L. WILLIAMS, PRESIDENT  
 AGRICULTURAL PRODUCERS  
 BEFORE THE  
 HOUSE SUBCOMMITTEE ON IMMIGRATION  
 REFUGEES AND INTERNATIONAL LAW  
 OF THE HOUSE JUDICIARY COMMITTEE  
 REGARDING H.R. 1510 THE IMMIGRATION  
 REFORM AND CONTROL ACT OF 1983  
 Washington, D.C.  
 March 10, 1983



SUMMARY

° Unauthorized alien workers play a significant and historic role, dating back more than a century, in the production of this nation's food and fiber. They currently comprise 50 percent or more of the harvest workforce in western agriculture.

° H.R. 1510, through its sanctions provisions, fundamentally shifts the responsibility for illegal immigration to the employer.

° Any effort to reform this country's immigration laws which fails to provide a certain, timely and responsive mechanism for the legal entry of alien workers is doomed to failure and makes any such attempt a meaningless exercise.

° The main objective of U.S. policy regarding the undocumented entry of aliens should be to reduce the size of the illegal component within the total migratory flow. Reducing the necessity for illegal entry through provision of a temporary work visa should be a primary goal of any reform effort.

° An "open market" program, complementing the H-2 program -- as it may be modified -- would be more responsive and, therefore, more workable with respect to agriculture in the west.

° Generally, the existing statutory authority for the administration of the H-2 program should continue. However, certain legislative modifications are necessary.

° The Subcommittee should adopt an amendment which it and the Senate approved during the 97th Congress, which provides for the Attorney General's approval, following consultation with the USDA and DOL, of all regulations necessary to implement the provisions of the agricultural temporary foreign worker [H(ii)(a)] program.

° The definition of a "labor dispute" is fundamental to the H-2 certification process. We do not intend that to threaten any legitimate labor action, but rather to avoid any frivolous disruption of the certification process. We offer appropriate language in the text of our statement.

° The Subcommittee should adopt a provision providing for an expedited de novo administrative hearing, at the applicant's request, where an employer's certification has been denied.

° The proposed Immigration Reform and Control Act is intended to comprehensively reform this country's immigration law. Such an intent is inconsistent unless federal law is clearly preemptive.



° Noting our philosophical disagreement to employer sanctions, we take cognizance of the place of employer sanctions as an element in a reform effort which includes a timely and responsive temporary foreign worker program.

° The Social Security Card -- appropriately modified -- should be the sole document for the identification of those who may be legally employed.

° We recommend, in addition to the provisions of H.R. 1510, which provide for permanent and temporary legalized status for those who have met certain specified criteria, another category be created to make available a "transitional" status for such others who do not seek or may not qualify for adjustment to the other categories. The USDA's Agricultural Employment Work Group has suggested such a "transitional" plan.

INTRODUCTION

Mr. Chairman, my name is Russell L. Williams. I am President of Agricultural Producers, an association of the citrus and avocado industries of California and Arizona. The association membership consists of approximately 80 percent of the 12,000 growers employing at peak the 25,000 to 30,000 employees of these industries.

Even though our testimony may seek clarification, suggest modification, or offer an alternative to provisions of the legislation, we strongly voice our support for the intent of H.R. 1510 and its comprehensive treatment of this sensitive issue.

It is our conviction that any effort to reform this country's immigration laws which fails to provide a certain, timely and responsive mechanism for the legal entry of alien workers is doomed to failure and makes any such attempt a meaningless exercise. We also unequivocally state our opinion that reform of this country's immigration law is absolutely essential to the continued stability, well being and security of this nation.

We believe the main objective of U.S. policy regarding the undocumented entry of aliens should be to reduce the size of the illegal component within the total migratory flow; to

transform as many of today's and tomorrow's undocumented aliens into legal immigrants, whether they are here as permanent settlers or as temporary workers. Reducing the necessity for illegal entry through provision of a temporary work visa should be a primary goal of any reform effort.

We would now turn our attention to the major provisions of H.R. 1510.

#### H-2 Modifications

"Illegal," "undocumented" or "unauthorized" alien workers have and do play a significant and historic role, dating back more than a century, in the production of this nation's food and fiber. These workers currently make up perhaps 50 percent or more of the harvest workforce in western agriculture.

The many and varied attempts by agriculture to attract domestic workers to perform farm labor have been enormously unsuccessful. For example, in the citrus industry near Phoenix, Arizona, during 1981, under a union contract paying an average hourly wage of \$6.50, with free housing, prepared meals at 30 percent less than cost, transportation reimbursement, and a major medical plan, ninety percent of the 1100 U.S. workers hired worked ten days or less. The citrus industry in Arizona has a ten-month season.



H.R. 1510 does not attempt to answer this complex phenomena of U.S. unemployment and the traditional involvement of foreign workers in our economy. It does however, through its sanctions provisions, fundamentally shift the responsibility for illegal immigration to the employer.

The Select Commission on Immigration and Refugee Policy has recognized the special situation that exists with regard to the temporary or seasonal jobs in agriculture that history has proven will not be filled by American workers. There is also the recognition that should the flow of illegal aliens be stopped or greatly slowed due to the imposition of employer sanctions, there will be an even greater need for agricultural employers to have access to temporary foreign workers when they can demonstrate that American workers who are willing, able and qualified to do the work are not available, cannot be recruited, and the Department of Labor is unable to recruit and refer such workers to employers.

While we feel that an "open market" program, complementing the H-2 program -- as it may be modified -- would be more responsive and, therefore, more workable in respect to the particular agricultural patterns prevalent in the west, we are nonetheless sensitive to the Congressional preference to only amend existing law in this area. We would, however, draw your attention to the need for a mechanism which is more quickly

responsive and less cumbersome than the H-2 program. The open market concept which will be discussed by others on the panel is an effort to address this need. We would request your thoughtful review of this proposal.

Generally, we believe the existing statutory authority for the administration of the H-2 program should continue. The Department of Justice with its overall concern and responsibility for immigration matters is the appropriate agency for control of this program. We likewise believe the utilization of Department of Labor and State Employment Services for the certification process should continue. However, certain legislative modifications are necessary.

While we recognize the delicate balance of interests contained in Section 211 of H.R. 1510, these modifications to the H-2 program, alone, will not result in the timely and responsive program needed when domestic labor cannot be found.

We, therefore, urge the Subcommittee to consider and adopt comparatively minor changes to existing H-2 procedures which will make the program less cumbersome, less complex, and more suitable to the needs of all agricultural employers.

The most important of these changes concerns the final authority for approval of regulations implementing the provisions of Section 211. We strongly recommend the

Subcommittee consider and adopt the regulatory structure which it and the Senate approved during the 97th Congress. "The Attorney General, in consultation with the Secretary of Labor and, in connection with agricultural labor or services, the Secretary of Agriculture," [should] "approve all regulations to be issued implementing the amendments of this section."

This language retains the Attorney General's appropriate lead authority on immigration matters and creates a regulatory structure in which the interests and views of the Labor and Agriculture Departments will be balanced by the Attorney General's ultimate authority.

While it is not our intent to attack or vilify the Department of Labor or the Department of Justice, we must convey the perceptions of many in agriculture -- both those currently involved in the program and those dependent upon the undocumented alien. Quite simply, it is respectfully submitted that the greatest obstacle to an effective utilization of the H-2 program is its total administrative bias against the admission of foreign workers. Such bias is manifested in apparently whimsical and cavalier administrative and regulatory decision making which act to frustrate, discourage and thwart an employer's effort to legitimize his workforce.



A balanced regulatory structure, cognizant of and responsive to the needs of the agricultural community, must be the foundation upon which a workable H-2 program is built. The Department of Agriculture must have a regular and substantial involvement in the development of H-2 regulations, for it is they who, by definition, and by law, must attempt to represent the interests of the farmer within the federal bureaucracy.

Agricultural employers seek this amendment for several reasons. We have outlined the historically adversarial relationship which the Department of Labor has maintained with agriculture. We have emphasized that the Attorney General is properly charged with the final authority on all immigration matters. We would also stress that the Department of Justice will, under H.R. 1510, have enforcement responsibility for the bill's employer sanctions provisions. The Justice Department will then be charged with the enforcement of the very provisions which Congress acknowledges will aggravate labor disruptions for agricultural employers. There can be no more clear institutional mandate for DOJ lead authority on H-2 regulations than the Department's enforcement responsibility for employer sanctions.

The definition of a "labor dispute" is fundamental to the H-2 certification process. We have absolutely no intention of threatening any legitimate labor action. Rather, we seek to

avoid the potentially frivolous disruption of the certification process, the timeliness of which is critical in meeting the harvest requirements of agricultural commodities.

Under existing DOL and INS regulations, the Department of Labor recognizes "any concerted activity involving two or more employees" as a "labor dispute." We strongly urge the adoption of the following language to define an agricultural labor dispute:

A labor dispute shall be deemed to exist at any job site when 50 percent or more of the agricultural employees of an employer, without coercion, are on strike against that employer or have been locked out by that employer on account of a good faith dispute over wages, hours and working conditions. Such labor dispute shall be deemed to have terminated when less than 50 percent of the agricultural employees of the employer remain on strike, but in no case shall the labor dispute survive the term of employment. A labor dispute shall bar replacements only for the number of strikers actually on strike. Certification for the remainder of H-2 workers applied for shall be granted if the application is in order and all other criteria are met. Upon application of any interested party, the Secretary of Labor shall, within 3 days where possible, but not more than 5 days in any case, conduct a hearing to determine whether a labor dispute exists and/or whether a labor dispute has terminated, and the number of workers affected thereby.

Mr. Chairman, you have been particularly understanding of our concerns with regard to the need for an expedited review of denial of certification. We recommend that the Subcommittee adopt a provision providing for a de novo administrative

hearing, at the applicant's request, under such circumstances. Present expedited administrative review procedures do not allow the employer to introduce evidence. The de novo administrative hearing, which was included in the Senate-passed version of Simpson/Mazzoli last year, is not an unnecessary layer of appeal; it is an important part of a viable expedited review procedure.

Additionally, we agree that an employer violating the substantial terms or conditions of employment under the H-2 program should be penalized. We would suggest, however, that certification be denied an employer for a period of one year only where a substantial -- not technical -- violation is involved.

Finally, the proposed Immigration Reform and Control Act is, we believe, intended to comprehensively reform this country's immigration law. It is our position that such an intent is inconsistent unless federal law is clearly preemptive.

#### Conclusion

These proposed revisions to Section 211 of H.R. 1510, which many agricultural employers support, do not constitute a "guestworker" program, or an "open boarder policy" or "a return to the bracero program" but do attempt to ensure that timely and responsive program will be in place should the need arise.

It is unfair and, more importantly, unrealistic to impose severe sanctions upon agricultural employers who have been forced to rely upon a largely illegal workforce, if these employers are not simultaneously provided with a workable program for the legal entry of temporary alien workers.

Unless the "H-2" provisions of H.R. 1510 embody this balanced view of the interests of U.S. labor and U.S. employers, the passage of this legislation will create chaos in American agriculture.

Regarding the other major provisions of H.R. 1510, we would offer the following brief comments.

#### Labor Certification

Title II, Part A, Section 201 amends Paragraph (14) of Section 212(a) [8 U.S.C. 1182]. We note this provision is not directed at agricultural employment. However, absent amendments [such as those set forth in Section 211 of this proposed legislation] providing for distinct, separate certification criteria for employers utilizing the proposed H(ii)(a) program, we would oppose such amendment to Section 212(a) as this section is referenced in the regulations for Labor Certification for Temporary Employment of Aliens in the United States as providing the "methodology for the two-fold determination of availability of domestic workers for any



adverse effect which would be occasioned by, the use of foreign workers for particular temporary jobs in the United States." (Federal Register, Friday, March 10, 1978, Part VIII, p. 10312 at Part 655.0(c).)

#### Employer Sanctions

While noting our philosophical disagreement to those provisions of the legislation which provide for civil and criminal sanctions, we take cognizance of their place as an element in a comprehensive, balanced reform effort which includes a timely and responsive temporary foreign worker program. However, we do not find it appropriate for a person, etc., to be criminally liable for mere employment. We are of the opinion such punishment is not warranted absent some egregious act (e.g., violation of a Temporary Restraining Order, etc., or a flagrant violation of a mandated work or safety standard.)

#### Employment Verification

The imposition of sanctions for the hiring of an individual ineligible for employment in the U.S., without correspondingly providing for a single, simple, practical and rational system to identify those who are legally employable, places an impossible compliance burden upon any employer.

We are in agreement with those who feel we already have in this country a document which, with modification, could meet

this requirement -- the Social Security card. We suggest the establishment of a phased, but expeditious (3 year) program that would lead to -- as the sole required document -- a Social Security card that is, insofar as possible, counterfeit resistant. If, as some have suggested and we agree, provision is made for a photograph, then the card should be updated periodically.

#### Adjustment of Status (Legalization)

We note, to date, that the legislative approaches to this matter have chosen to address the issue through the creation of one or two categories of adjusted legalized status. All those who entered the United States prior to some specified date [and have subsequently "resided continuously" within the U.S.] would be granted some form of legal resident status. Those not meeting the "test" would be subject (upon apprehension) to immediate deportation. We believe the proposals as set forth in the legislation will serve only to postpone and exacerbate a resolution of the issue in that they may deal with a relatively small percentage of the undocumented other population. An uncertain majority will be left in some sort of undefined limbo. We recognize this point is arguable but feel that many of those otherwise eligible for adjustment may (1) prefer not to accept what they may find to be a somewhat patronizing offer and instead retain their current citizenship status with their

country of origin; or (2) be unable to properly document their eligibility for adjustment. One example of this difficulty might result from the utilization during the eligibility period of numerous pseudonyms.

Therefore, we invite your consideration of the creation of three categories of "adjusted status." The provisions of H.R. 1510 are designed to provide a permanent resident status to those who have demonstrated a desire and intent to permanently relocate in the United States, and to allow for a "temporary" category for those who have arrived more recently, yet have demonstrated such an intent and desire. We recommend an additional category be created to make available (while the change from a system of principally undocumented migration to a regulated method of temporary entry occurs) a "transitional" status for such others who do not seek or may not qualify for adjustment to the other categories.

The Agricultural Employment Work Group, funded by the U.S. Department of Agriculture and comprised of worker representatives, employers and employer representatives, and representatives of the academic community have suggested a "transitional" plan. We believe this proposal, utilizing those who fall into this "limbo" is both compassionate in its treatment of such persons and logical in that it eases the dislocation that will unquestionably follow the enactment of IRCA.

The provisions of such a transitional program are set forth in Alien Workers in American Agriculture: Analysis and Recommendations, distributed through the Division of Agricultural Sciences; University of California, Berkeley, California; December, 1982.

Mr. Chairman, this concludes our statement, thank you for this opportunity to express our views on H.R. 1510 - the Immigration Reform and Control Act of 1983.

Mr. MAZZOLI. Let me yield myself 5 minutes.

Let me talk to the cattlemen. You have less close interest in the bill maybe than your colleagues because your business is not as labor intensive.

But both of you have brought up the question of the legalization program as being hard philosophically.

Mr. Seeligson, in your statement I thought you went into some of the foreign policy aspects of this bill in dealing with immigration and our neighbor to the south, Mexico.

When you first get into the question of legalization, you ask, "How can you reward people for their unlawful conduct?" And the more you study the question, the more you realize that this unlawful conduct is unlawful technically, but, in a sense, as you have described very adequately, people come and go through the border without harming people.

There has been a winking and nodding and looking away at the enforcement of the law because we have not had a consensus to enforce it. These people have been coming in not to rape and plunder and pillage, but to take jobs and to do them, as I think Mr. Hornibrook said, pretty well.

So I would ask both of you at least to consider if a legalization program as an element of an overall bill is a meritorious program.

I just wonder maybe if you have some observations.

Mr. SEELIGSON. Mr. Chairman, I am for an amnesty approach, but I am not for quite as generous an approach as you all have.

Mr. MAZZOLI. You are for updating the registry data only?

Mr. SEELIGSON. Yes, sir.

Perhaps cattle people are a little more conservative. Since it is going to be a jump in the future, we just thought maybe we wanted to make a shorter hop.

Mr. MAZZOLI. Mr. Hornibrook?

Mr. HORNIBROOK. Mr. Chairman, I am close to the Yakima Valley. The Yakima Valley is moving into the subculture, becoming more and more evidenced, faster than we have known it before. We are seeing people that stay there after their work period is over, and the frustrations of living in a cold wet climate, which is sometimes not too friendly.

To grant those people amnesty rather than putting them in transit bothers me somewhat. I don't mean to treat them like Kleenex; when we get them dirty we throw them away. But I am more or less interested in what has been happening in Switzerland with the Italians. When their work job is done, they return across the border. We have contact with a family out of Lucerne, and they use quite a few laborers from out of the country.

We feel that, rather than keep them here to become a burden on our schools and our social and welfare programs, it would be better to take them back, and then start justifying the amnesty to those people who can be gainfully employed and provide enough employment for their gainful citizenship.

Mr. MAZZOLI. Of course people call it a blanket amnesty. It is really not that because you have to be individually tested against the exclusions in the Immigration Act, and you have to present yourself and present documentation that you have been here continuously to the ins.



It is an interesting question, as I say. It is one that we have had to wrestle with. It is to me an element of the bill that if removed, would make the bill lose the symmetry that I think it has now and needs to have in order to pass.

Mr. SEELIGSON. I just would like to comment, we basically agree with you, Mr. Chairman, on that, particularly with our concern about Mexico. We feel that to just uproot all the people that are already in San Antonio would be impractical. Of course, the first thing I tried to emphasize is that, to understand the magnitude of the problem, you have to find out how many are here before you can even get a logical hand on it.

I want to also say we sympathize with you too. I listened to your opening remarks attentively, and I wish I could have been more cooperative.

Mr. MAZZOLI. The gentleman from California.

Mr. LUNGREN. Thank you, Mr. Chairman.

I just want to say it is encouraging that this many representatives of the agricultural community are here this early in this session to give us your ideas rather than getting your ideas after the horse is out of the barn, which I think may have happened in part last time because, as Mr. Ellsworth suggested, no one really believed we were really going to do it. And I want to thank Mr. Seeligson for putting into context the immigration problem with respect to our closest neighbor, Mexico.

Trying to say we are going to deal with the immigration problem in a vacuum, including employment, and the temporary workers without thought to the pressures that we feel in Mexico, is like dealing with economic policy totally in a vacuum without regard to trade or currency valuations, and so forth.

Just for the record, I would like to comment, in an effort to keep within the time, on a quote from Leonel Castillo, the former Commissioner of the U.S. Immigration and Naturalization Service, who said:

The United States is experiencing the world's largest temporary worker program, larger even than the guest worker programs of Switzerland, France, Holland, and Germany. Only ours is unregulated, resulting in the Immigration Service having to arrest over a million persons annually whose crime is that they want to work in this country.

It is a two-way street. Mexico very much needs in a sense a safety valve. We have allowed that to occur. It has become a historical model. And now I think those of us in Congress have to be very cognizant of the implications of totally cutting off or believing we can totally cut off the flow of foreign workers (particularly from our southern border) first, and second, that it would not devastate agriculture while we do that.

Mr. Voss, I would like to ask you, we hear in generalities often-times about how certain crops are more difficult to harvest because of the time restraints and so forth, and why a cumbersome H-2 process would not work in particular parts of the country. I say that all the time, but I am not a farmer. My area is not agricultural.

Could you give us any specifics in your own work or those of the people you represent—what are we talking about, what kind of

fruits or vegetables are we talking about? Does a couple of days make a difference? Does a week make a difference, and why?

Mr. Voss. Thank you.

If you don't mind, just to react to my own personal experiences in my operation, and some of the crops we raise are for the fresh market: sweet cherries, peaches, plums. Normally in these crops we have a 3- to 4-day optimum period of harvest.

We start to pick when they are just slightly below what I would consider minimum. We have probably 2 days in the most optimum area and one day that we have gone a little bit past optimum as far as maturity is concerned. The timing of harvest varies from year to year. We have a continued flow of peaches or plums because we have various varieties bred for each week or 2-week period of the year. But those vary from year to year depending upon the climate.

If we were to have consistent, 85° weather in the summer months, we would know what to expect. But we have years where the temperature ranges in the 105 to 110 area; that speeds up harvest a week. Yet we have little knowledge or ability to control that any length of time in advance. So we react and have to react quickly.

Historically, we have reacted because we have a free flow of labor that harvests my fruit for a few days, and people in the same area have different soil conditions—they may have the same variety ripen 2 or 3 days ahead of mine. So labor has a continual employment pattern. But they move around as the varieties change and the seasons change.

Mr. LUNGREN. How many people do you need for the harvest of one of your crops and for what period of time?

Mr. Voss. We have a steady labor force year-round of 10 to 12 people. When we move into harvest, we will jump in a couple of days time from 20 people up to 100, and then back down a few days later.

As the different varieties come in, it fluctuates throughout the July to September months, varying in the area of 20 to 100 people.

Mr. LUNGREN. Some of these organizations have complained about the 80-day requirement. That is, you would have to make a request for certification from the Labor Department by 80 days, no less than 80 days, under I think it was the Education and Labor Committees bill.

We have 50 days. What does that mean to you, if you were under a legal obligation to make a request for those workers 80 days ahead of time?

Mr. Voss. I believe 80 days under our conditions is impossible. I don't think in most of our commodities we really can tell that far in advance what the volume of crop is going to be, much less when the real need for that labor will be.

Mr. LUNGREN. For a city person like myself who practiced law, we easily postpone things in a courtroom 10 days, a week, 2 weeks, a month, 5 years. So those times really don't mean that much to us. But you are saying within 2 to 5 days can mean the difference between having a crop and not?



Mr. VOSS. It would mean the difference between a harvest and not harvesting in many cases, in many of our fresh fruit and fresh vegetable type crops.

Mr. ELLSWORTH. I would like to point out, Congressman, that in 80 days you plant and harvest green beans. So to expect, that far ahead of time, a knowledge of how many workers you need requires making a first-class guess, because you don't now what the weather is going to be. For example, with red delicious apples whose harvest interval is just about 1 week, you can plant various varieties but those trees each year are all going to produce their fruit at the same time. But you don't know, depending on weather, whether it is going to be this week or next week.

Mr. LUNGREN. It sounds like your estimates change about as quickly as our estimates of deficits.

Mr. MAZZOLI. Tom.

Mr. HALE. Then you need to multiply that, that situation Mr. Voss referred to, times the 98,000 farm members in his organization, and there must be in the State over a 100,000, times all the different geographical areas, and the availables that each geographical area creates. You then begin to appreciate the impossibility of imposing a very rigid system on that kind of very fluid situation.

Mr. MAZZOLI. That intrigues me. At some point I am going to ask if it is so tough to calculate this, how can you today handle the situation where you have to make calls apparently overnight if, for instance, the Santa Ana comes in and all of a sudden it changes the whole harvest pattern?

You have to get these people somewhere too. I don't know how you can even accomplish it today unless there are people who are knowingly involving themselves in the hire of undocumented. I don't know.

I yield to my friend from Florida.

Mr. MCCOLLUM. The question I would like to ask is of Mr. Sorn. It has to do with a Florida-raised question. I had an occasion a week or so ago to talk with some of our citrus growers. They expressed a couple of concerns.

One of the most intriguing ones was relative to the identification presentation to the person doing the employing by the prospective employee under an employer sanctions provision.

They were very concerned with the seasonal nature as we have just been discussing of all these crops. They said we have a problem; we have to harvest our crops in a 1-, 2-, 3- or 4-day period, and we find that 30 people show up for a crew one morning, and of the 30 people 15 of them don't have any identification on them. They have excuses like, well, my wife has it or whatever, and they said it would be extraordinarily helpful to them if they had a 1-day or 2-day delay in any effective punishment to them for the person to produce that identification, because they just see the nature of the worker, the potential worker and his education level, and so on, as producing a lot of opportunities for that to occur, where they don't have it on them, and then they have a real worker shortage.

Do you have any comments about that? Could you discuss that with us for a minute.

Mr. SORN. Yes, sir, that is one of the reasons that we highly recommend there be one identifier to start off with.

Let me just, if you will, follow through with our interpretation of what you are saying in H.R. 1510 and how that would apply in the field.

What I understand you to be saying in H.R. 1510 is that it would be illegal for me as an employer hiring—and a lot of it is done in the field on a very short-term basis—it would be illegal for me to put that man to work unless I had this form filled out because at the time I put him to work I am in fact hiring him. I cannot even let that man start working and then later in the day check his credentials. It would be illegal under the law and subject to penalties.

Follow that through with the situation where you are hiring in the field, you are hiring for short term, as you say. You might have a bean picker and the critically short harvest of the crop is the same in beans as it is with what was described by Mr. Voss. And you have two busloads of workers come out there, 80 workers. This is the first time I have seen them in maybe several months. I don't know who they are.

A worker comes up to me; starts working, and I get to him and try to get his identification. He says "I lost my social security card last night." He doesn't have his birth certificate with him. Automatically I am in violation of the law and cannot utilize him. He might have a social security card; maybe he misplaced it.

Then getting onto the second part, in your process I must either see a social security card or a birth certificate. In a lot of cases that relates only to a social security card because there are a significant number of workers who cannot produce a birth certificate under any conditions. So you rely on the social security card, which can be easily lost.

In addition, I must see their alien documentation, which is no real problem, or a driver's license. Not all of our workers have a driver's license. They can be lost too. So you do have a problem regarding the hiring of workers before verification.

Mr. McCOLLUM. Notwithstanding the problem of wanting one single identifier, which we have in the bill to be developed, but unfortunately, we don't present it in this legislation, in the interim period wouldn't it be very helpful to have a grace period of a day or so?

Mr. VOSS. Absolutely. I would hate to stop that worker from working today when he says he can bring the social security card in the morning. There should be a 24- or 48-hour grace period.

Mr. McCOLLUM. Mr. Seeligson?

Mr. SEELIGSON. I would just like to comment on that.

We raise watermelons. We have a broker that brings in the illegal immigrants, and I would be horrified if he would show up if every worker wouldn't have his driver's license and social security card. We would discharge that broker. That is our main worry with the bill, the ease with which they are going to be able to get around it. And our man I know would show up with all the credentials, fraudulent or not.

Mr. McCOLLUM. Mr. Norton, do you want to comment?

Mr. NORTON. On a slightly different subject, if I could, I would like to touch on something that stuck in my mind from the testi-



mony of Mr. Donahue earlier this morning, about how we always had plenty of fresh fruits and vegetables in the United States before we had all these illegal aliens.

I think we have to think very carefully about the demographic evolution of the United States; 50 or 60 years ago we didn't have refrigerated trucks. We had just some old standard reefer railroad cars with ice in them. We didn't have many good fresh fruits and vegetables on store shelves in New York City and Boston and Chicago 50 or 60 or 70 years ago. They were scarce. They were exotic things.

In the interim we have developed an immense fresh fruit and vegetable industry in the United States whereby, in a typical major chain store, you can get the most beautiful variety of fresh fruits and vegetables, almost anything you want year-round. We have done this mainly off the backs of non-U.S. labor.

We have had some kind of foreign labor ever since I was a child. I grew up in Phoenix, Ariz. My dad was a vegetable farmer. I have been that all my life, in addition to raising cotton and cattle. We have always had Mexican labor from across that border, either under Public Law 78 or under illegal aliens, or however they got there.

When I was a little kid, my dad took me out West to Phoenix on the farm and we had Mexicans on the farm doing that work in the 1930's. We did not develop this industry with unemployed Detroit auto workers and steel workers and we are not going to perpetuate it by trying to ship them across the country to maintain this business, unless we have a readily available supply of labor.

So you have to remember the demographics of the problem. You cannot overlook that. We are a different country than we were 60 or 70 years ago when most of our people were living on the farms and could pick their own tomatoes in the backyard. But you cannot pick a tomato if you live in an apartment house in Manhattan.

Mr. MAZZOLI. Thank you very much. That gets us to what I was going to ask.

First, Mr. Williams, is there anything in agriculture which can technically say that this is a perishable crop and that is nonperishable, or this is a labor-intensive activity crop and that is not?

For the purpose of deciding whether or not there should be any exemptions, any waiver, any special treatment, is there agreement in agriculture—this is perishable and this is not perishable?

Mr. WILLIAMS. Well, at the risk of having a few of these gentlemen at the table jump on me here, it is rare for us to have agreement in agriculture on anything. We are independent. But I would think that, yes—I am not going to enumerate them—I think there is a general understanding and agreement within agriculture, of what would be considered highly perishable and what would not.

Mr. MAZZOLI. You could get 80 or 90 percent agreement on perishable or nonperishable?

Mr. NORTON. 51 percent.

Mr. MAZZOLI. What I am driving at is, I don't know whether it is draftable, but is there any way to make a variance on that with respect to certain crops? Is that at all feasible?

Mr. WILLIAMS. Yes, I think it is feasible. I think there is a proviso or caveat I would add, which may further complicate this

matter. Mr. Voss and Mr. Norton made the point that it is fairly common for an individual or a corporation, whether it be family-held or larger, not to grow just citrus or grapes, but to grow citrus, grapes, cotton, vegetables, cattle.

You don't want to create a situation where a person, I think from a practical standpoint, has to operate under two or three different provisions of the law, because you begin to whipsaw him with regard to how he manages labor, and it may be that one provision is mutually exclusive of the other.

Mr. MAZZOLI. Well, under today's situation, if you have a grower who does that, has several kinds of citrus, and cotton, and cattle and other things, and they have to deal with the labor supplier, as a practical matter isn't the case the same person who comes in who does the citrus is also able to stay on and work with the nuts or other sorts of crops? Or are they so specialized that they move on because they are trained and able to do citrus and then another wave of people do the other stuff?

I am just curious where we are today.

Mr. WILLIAMS. I will give you my experience.

Yes, there is a specialization within certain categories. For example, in the citrus industry, it is unusual to see the men or women who work in trees, go out and do stoop labor in the fields such as picking vegetables, and vice versa.

There is some transition. But basically people who work in vines and trees stay in vines and trees. Those who work in the field generally stay in the fields.

Mr. MAZZOLI. OK.

One other thing. I am not going to pursue that exactly, but as I was talking with some of the agricultural people last weekend and I have been doing some reading, I am now convinced there is a difference in crops. It is one thing to pick an apple off a tree which has a little bit more leeway than to get a cherry, where Mr. Voss was saying he has 3, 4, 5 days and that is it.

Let me mention one other thing.

If I understand this new general proposal—I have not had a chance to read it specifically, but I intend to—the study from the University of California at Berkeley proposes a transition.

If I understand all this correctly, what we would have is, in effect, if these suggestions that you talk about go through, a modernized and updated H-2 program, something which makes the current H-2, workable. You use it in Florida but it is not largely used elsewhere. We would bring it up to date with new language. You talk about having changes in the strike language, you talk about having the Attorney General involved in regulatory decisions.

Now you also talk of a supplemental program for highly perishable crops. What is your general position?

Mr. HALE. Mr. Chairman, I think it is probably not appropriate to use one criterion as being a determinant as to whether you can use one program or another, that criteria being perishability. I think you do need to look at the labor intensity, at what the absolute numbers are of the program.

Are we talking about an 18,000-person program under H-2 or about a 300,000 program under the alternative form.



Also, there exists this high volatility. Mr. Voss's statement about how one day he needs 20 people, the next day 100 people. That could occur in a product that is not so highly perishable. So I think we need to recognize all the different factors and have a system which will allow a reasonable employer to work under one program or another.

Mr. MAZZOLI. The next thing I was going to say was, what is highly labor-intensive or not so highly labor-intensive.

Mr. NORTON. Extreme seasonality is a factor as well as perishability. When a crop comes off at a very short period of the year and it has to be harvested in that short period of time, the seasonal effect causes a need for an immediate large number of people.

Mr. MAZZOLI. So for reasons of perishability, seasonality, volatility, geography—

Mr. SEELIGSON. Redtape, because it nullifies the program.

Mr. MAZZOLI. For all these reasons, there is not, in your judgment, the ability of a modified H-2 to cover all of your needs and that is why you then have a supplemental?

Mr. WILLIAMS. Let me give you one example with regard to the citrus industry in Phoenix which utilizes, to a great extent, the H-2 program. In the San Joaquin Valley, where I am from, this last year we have had a great deal of rain. During that rainy period, there may be 1 day a week where we can harvest citrus. Naturally we want to get in and harvest as much as we can during that one period. So we are going to need a larger labor force for that short period.

There is nothing we can do to control that even in a crop not as highly perishable as a peach, plum, or cherry.

Mr. MAZZOLI. For those reasons you believe as a panel that the H-2 could not serve all the needs of agriculture.

Is that generally agreed?

Mr. HORNIBROOK. Yes and no. I think that, if administered consistent with Congress original intent and with modifications, the H-2 program could serve our seasonal needs.

Now, I am saying seasonal needs. I do have to cover my tracks a little bit on that, because of the time that we had that mountain blowout there, the media in their anxiety said we had completely destroyed all the crops in the State of Washington.

The bureaucracy then made the determination that we didn't need any workers, and the workers decided there wasn't any sense in coming to Washington anyhow; they didn't like the dust. So, we do need some flexibility to take care of such situations.

Mr. MAZZOLI. Let me proceed.

H-2 modernized will suit much but perhaps not all of the needs of agriculture. And that is the reason why you gentleman agree, and I guess agriculture agrees, there needs to be some supplemental system. We don't know how many or what the system would be. Let's just say it is a supplemental system which would then allow the entry of people from abroad. That would then be a program.

Reading your statements, you talk in terms of possibly 100,000 or 200,000 workers.

Then there is a third situation. This is what this paper talks about, which is a transition to get into the new era, when you have a good H-2 program and a supplemental worker program. Is that

correct? It is this where you have this transition program, 80 percent, 60 percent, whatever it is.

I just want to get in my mind what agriculture's belief is that could solve the problem.

Mr. Seeligson?

Mr. SEELIGSON. My experts tell me that that was the original intention of Congress when they passed the H-2 program, and that through administrative decisions in the Department of Labor, the program has reached a point where nobody uses it.

Mr. NORTON. You will never have a successful program totally administered by the Department of Labor because of the influence of the unions who are opposed to any form of legal conscription of foreign labor, because of their insistence that it is replacing American labor, rightly or wrongly.

Mr. MAZZOLI. That is why you talk in terms of having the Department of Agriculture and the Attorney General. The gentleman from California is recognized.

Mr. LUNGREN. The first thing I would say, after listening to the panel and getting the different views, being questioned by a group of lawyers, it is obvious to me there is without a doubt a need for the Secretary of Agriculture to have input on any regulation.

We are talking about seasonality, talking about perishability, talking about climate conditions, talking about different geographic conditions. It would seem to me that the Department of Agriculture—which seems to me we happen to fund with more than a nickel and a dime—should be doing something to give us some guidance on that.

One thing I would say to this panel is, I think that not only should you be talking to us; you also ought to be talking to the members of the Agriculture Committee. I don't want them to take this bill. We don't need any more people taking this bill, but when we get on the floor we need the input of the members of the Agriculture Committee, because if this is as important as you are telling us—I believe you—the average Member of Congress is only going to understand that if the members of the Agriculture Committee are saying that on the floor and giving us some of the insights.

If it appears they are not interested, we can say everything we want about how important this is to the lifeblood of agriculture. But if the Agriculture Committee members are not interested it is because they didn't enter into the debate, or don't support part of the legislation, we are going to be hard pressed to convince our other members of that.

I would like to ask a question of the panel.

If you take as given that we are successful in passing a bill with employer sanctions—and there would be enforcement of employer sanctions—but we would not fashion a successful H-2 program, guest worker program or combination thereof—such that you could not obtain sufficient labor in certain segments, at least the same type of labor you have had—what do you think the end result would be?

We have heard from a representative of a major union who firmly and sincerely believes that you can get American domestic workers to take those jobs. I would like to hear from you, what do



you think realistically—don't describe to me the end of the world if that is not what it is going to be. What would happen to agriculture if we had those things take place?

Mr. NORTON. The thing that troublesome about that is that if there is insufficient labor provided by some legal program, then employer sanctions with criminal punishment treat the effect, not the cause. It is kind of like the argument over capital punishment. We say that capital punishment doesn't deter crime; it just treats the crime post facto.

Well, if the Mexican is hungry and starving and has nothing in the way of employment opportunity in his own country, he won't be stopped from coming over here and trying to seek employment. So, we will still have the flood of them and have a lot of them working with illegal documents, forged documents, and so forth.

I think we will have a terrible enforcement problem. It is the very type of thing that, in my opinion, causes people to lose respect for their laws and for their country. It causes a cynicism that would prevail in these areas, and I think you would have tremendous problems.

Mr. SORN. Speaking to that, I think there would be a tremendous rearrangement in agricultural production in high labor-using crops. I think part of the production in the fresh fruit and vegetable industry will go to Mexico, as we already have foreign competition with Mexico. So, instead of that part of the cost of production being paid to a foreign worker who sends that to Mexico, you are going to be paying Mexico for the entire cost of that crop.

Mr. SEELIGSON. I would like to comment on one thing. I think early in 1981, maybe 1982, the Immigration Service came through Houston and picked up several thousand illegal aliens. The ones they concentrated on were not domestics. They tried to get people that got better than minimum wage.

In all fairness, at that time, the unemployment rate in Texas obviously wasn't necessarily as high as Flint or places like that. I think there might have been a different story if this same thing had occurred in Flint. But they could get very few people to come in and replace the illegal aliens that they had discharged. There were people working in furniture assembly lines and places like that.

I have always felt that organized labor, deep down inside, knows what they are saying is correct, but their fellow has to run for election, too. If they came in and took a different tack, maybe they would have another occupation other than being president of a union, if you follow what I mean.

In other words, you find situations where we are right there on the border searching for a cowhand or something and there is nobody available. All of us would much prefer to have U.S. workers, if they were available. Certainly that is the case in my business. Those would be the ones that you turn to first, but sometimes you just cannot find them.

Mr. VOSS. I think, in the perishable fruit and vegetable part of our industry in California, it would be disastrous if we truly had sanctions on the employer of the scope I think would be needed and are contained in this present bill, if we had to depend upon domestic labor.

I think we have had enough pilot programs over the years, from time to time, to show us that, yes, there may be some means of encouraging a small percentage of the unemployed in the core city to come out and do agriculture jobs.

But in no way has there ever been a reaction in these programs that would indicate we would have any more than a token labor force of domestic workers.

Mr. HALE. There has been a pilot project in Fresno County where the Fresno County Farm Bureau, raisin growers in particular, attempted, in cooperation with our California Department of Employment, to acquire domestic labor.

Throughout the 2 years of this program, they were only successful in placing 10 percent of the demand for workers.

Mr. LUNGREN. What kind of pay are you talking about?

Mr. HALE. You are talking about roughly \$4 an hour.

This was done the year before last and the year before that. It was at that time about \$3.75 an hour, above minimum wage.

In addition to that, it is common for these employers to pay for health benefits and also to provide for vacation benefits for year-round employees. So it is not as if we are at a minimum wage level.

I think we also need to appreciate something else. All of us here can reflect upon our own upbringing and ask ourselves how many of us were brought up with the idea that it is our place in life to perform seasonal labor, regardless of the type, whether in field or factory. I think we have a certain conditioning that says something other than that. I think we all have experienced that, and it is a part of our life and culture.

There is a very practical side to this thing as well as the tests that have been done.

Mr. WILLIAMS. May I just comment?

Mr. Norton referred earlier, and I do in my written statement, to the experience of the citrus industry in the Phoenix area with regard to the H-2 program. There is a paragraph in my written testimony that goes to this.

One employer there has approximately 180 job opportunities for about a 10-month period. He, Mr. Mortori, has testified before. He seeks certification every year.

The Department of Labor has indications that these 180 people will show up. They never do. Then they get certification in a period of time for about 150 of those 180.

So there are 150 H-2 workers coming in from Mexico. There are 30 slots available he needs to fill, and the employment service continues to refer.

In 1981, they referred 1,100 people to fill those 30 slots. Eighty-five percent of those 1,100 people quit voluntarily without any coercion within 5 days. That is the type of thing that you get involved in.

In Phoenix, we are talking about a job that is unionized, paying \$6.55 an hour that year, with major medical benefits. When you put that together with the volatility we have discussed, you begin to understand the impact.

Mr. MAZZOLI. The gentleman from Florida.

Mr. McCOLLUM. Thank you.

Aside from the volatility question in the H-2 program, it occurs to me the single biggest obstacle to making the H-2 program work in most areas of industry or agriculture is the housing question. I think only Mr. Ellsworth in his testimony has referred to that issue.

I would really like for some of you other gentlemen to comment on it, because, for example, what I have discussed with some of the agricultural interests in my State and with Mr. Sorn on occasion, is the fact that there are industries besides the sugarcane industry which have used H-2 in Florida in the past; citrus did for a while. But there is no housing already constructed.

It is no longer in existence. And you are talking about an unknown for a while in the transitional phase of this program, in which agricultural employers are not going to know whether they have to construct housing.

Even if the expense of housing would be economically feasible, there is something they are not going to be willing to get involved with until they actually see they need the workers and how many they need from that source over a period of time. So that the whole idea of having to comply with the presently worded structure of housing in the H-2 program is it is a cumbersome proposition.

That is a synopsis of my impression from talking to my agricultural people. But I would very much like others, Mr. Ellsworth or others, to comment on that, to see if my interpretation is correct, if there are any suggestions about how we could in the scope of the transition idea modify for a temporary period the housing feature of H-2 to make it more acceptable to the industry.

Anyone want to take a pitch at that?

Mr. HORNIBROOK. I will take a shot at it, because we did have a problem in the Yakima Valley with housing and housing migrants.

We had several cooperative housing units that were being used, and growers would contract for housing units to house the people they brought in. The Department of Social and Health Services became the lead agency to inspect these units.

The agency decided the lesser of two evils was to close them. So, the people were camping on the banks of the Yakima River. What camps were left open were very depressing types of things, with dust up to your knees. The kids were dirty and everybody sat in their doorways.

In that illegal camp they were playing softball and swimming in the river. So, the housing during that period of time was less of a problem because the weather was not that inclement.

Since that time, there have been various attempts to provide housing and each one has met with futility and failure. So it is a difficult problem to provide the housing. And it is very expensive; \$4,000 units can be destroyed in a matter of weeks with people who are not serious about maintaining it.

So the housing is a very definite identifiable problem in the H-2 program.

Mr. McCOLLUM. Anyone else? Mr. Hale.

Mr. HALE. There is not a lot of factual information on this, but there is a study made in September 1979 by the University of California at Davis. This necessarily refers to the situation in California, but it is probably typical of the situation around the country.



A part of this study includes a segment on housing and the conditions that are faced in California with regard to agricultural housing. If I may just quickly, let me briefly state what some of their summary of facts are.

No. 1, that there is a critical shortage of agricultural housing in California, especially for seasonal harvest and agricultural crews; that there has been no major construction of labor camps in California since 1970; that construction and financing costs for agricultural employee housing has escalated at such an explosive rate that any large scale of construction of that housing is highly unlikely.

The study goes on to state the costs are about \$35 to \$37 per square foot for parks type of housing; that in the highly urbanized areas adjacent to many high-use crops, such as vegetables and citrus, it is virtually impossible to get the permission for the construction of labor camps from county and city planning commissions.

With the dissolution of many farm employer labor associations who had labor camps—that was during the Public Law 78 days—they not only dissolved the association, but the housing they operated at the time of dissolution.

That agricultural employee labor housing in California is a highly regulated entity by the Department of Housing and Community Development and local planning and building and safety departments, and that these regulations, which cover maintenance as well as construction, have tended to be one of a number of factors that have limited new construction and required farm employers to get out of the housing business.

In summary, for my membership, I know they are very resistant to construction of any housing. The housing is not currently available.

For example, in Arvin, Calif., where you have a 2½-week period of harvest, they find it absolutely impossible to think about building housing so you can have people occupy it for 2½ weeks a year.

Mr. McCOLLUM. You are saying even if we provided some transition period in which to find out what the needs are, there still would be an impossibility in certain quarters of the country, particularly California, to build the housing for an H-2 program regardless of any other factor.

Mr. HALE. Yes, sir, that is correct. And the problems are not only internal ones that the employer has some control over, but also external to his control.

Mr. McCOLLUM. Am I correct that there are parts of the country such as the Florida citrus industry and perhaps something up in Washington State and other places, where if the economics of the circumstances pan out—if we had a transition period, where the same problems Mr. Hale described would not keep you from building the housing, that it would be more of a question of time and a chance to let it shake down. Am I correct in that or wrong about that?

Mr. HORNIBROOK. Yes; I think you are very correct.

A lot of our orchard operators do have migrant housing within the orchard for their own employees, and they have had to build



that and maintain it simply to keep the employees there, so there is some.

The county planner, the minute you start building migrant housing, waves flags and all the people in the neighborhood decide that is about as agreeable as putting in a home for delinquent juveniles. You are fighting the whole planning procedure.

It is being done, and I think it will be done in the future.

Mr. ELLSWORTH. I was going to say, not at the risk of contravening this study, but there are individual employers throughout this country that do have and provide housing for workers. So it is not a total blanket lack of housing.

But more importantly—and perhaps Mr. Williams or Mr. Sorn would like to elaborate on this—if this H-2 program, can be arranged in such a way that workers can remain here long enough for an association to employ those workers in different crops, for a longer period of time, let's say as the INS regulations say, up to 11 months now, then they might be able to afford to construct that housing. At this point in time, for 2 weeks, there is no way.

Mr. MAZZOLI. That is true if there is a central location for that housing from which the people can go to the various farms or ranches to do the work.

I just wonder, as a practical matter, does that exist?

Mr. WILLIAMS. To a certain extent that certainly would resolve some of the problem with regard to housing.

I want to reemphasize that, assuming we can find a similarity of interest, where crops can get together and work together in this kind of a way—and I think that is possible; it is not going to be easy but it will be possible—and assuming we can find the financing that makes this whole thing financially viable, and assuming that the program is likely to last long enough for that to be financially feasible also, we still perpetually, continually, run into problems.

We tried several years ago in the citrus industry in southern California to build—one particular employer did—to put up a new camp. Their existing camp was being surrounded by urban expansion, all subdivisions around it. It was like a prison or juvenile home or airport. We tried to put it out in the middle of the desert.

Mr. MCCOLLUM. What about a cooperative effort that might be necessary; would the industry have employers willing to join together and have shared housing?

Mr. NORTON. I would like to address that.

Under Public Law 78, I operated in several areas in Arizona and California. In each of the areas we formed an association of all the growers, in Imperial Valley, in the Blythe area, Palo Verde Valley. This association contracted for and arranged for the importation of the laborers and the screening of them for all of the cooperative members under Public Law 78.

We also, many of those associations, got into as an adjunct building and creating and operating camps for this mass of workers. In other instances, farmers would have their own camps, even though they were a member of the association contracting through them.

As he points out, and Mr. Hale, the camps are going to be infinitely more expensive than they were in those days because of

housing costs. I am sure that the requirements would probably be somewhat more stringent.

Some of our camps were a bit primitive, although over the years, in the 1950's and 1960's, they were upgraded. I owned maybe 4 camps where I could house upwards of 300 to 400 people. They were expensive to own and maintain, but we lived with it. It was part of the program.

We did it on the basis that we had a dependable supply of labor and would be able to renew the contracts each year so we could amortize over a fairly long period.

One concern with any type legislation would be the length of period that you anticipate being able to depend upon it and how firm your ground is that you are walking on here. Can you make an investment of a \$1 million in a labor camp and see your way clear to amortize it?

The zoning thing is one that I don't think the U.S. Congress is able to deal with.

Mr. McCOLLUM. Mr. Norton, doesn't all of this go to point up my initial impression? And that is, there needs to be some kind of a phase in in effect with respect to the housing component of the H-2 program as far as its application is concerned in our bill, in terms of giving the agricultural grower the time, to get together, to check the zoning, to try to work the kinks out of this. That is my impression.

Mr. NORTON. I agree. You wonder where they are being housed now. I can't tell you about Yakima.

I think you would all be very surprised how far these people go in buses every day to work. I harvest lettuce in Blythe, Calif., now, which is about 120 miles from Mexicali. And those people who are dual citizens, they have a green card and they have every right you have except the right to vote and hold public office. They are also still Mexican citizens.

We haul them all the way from Mexicali to Blythe, 2 hours early in the morning, cut lettuce all day, haul them all the way back at night, and the next day do the same thing, because they want to live in Mexicali. They would not live in Blythe if we gave them housing.

We had a lot of housing as an aftermath of the Public Law 78. And that housing fell into disuse because the people would prefer to live in their own country and come over here on a day-haul basis.

Most of that housing has been abandoned and ultimately destroyed.

Mr. MAZZOLI. Mr. Sorn.

Mr. SORN. One further comment.

I agree with everything that has been said as far as problems with zoning and cost and worker resistance to not wanting to live in camp-type facilities. There is one additional drawback.

The current regulations on utilization of H-2 workers prevent you from charging rent and also place an arbitrary maximum on the amount of board you can charge for three or four meals at \$5. That is a disincentive for anyone to put up housing. And it is possible that should be considered.

Mr. MAZZOLI. Let me yield myself a couple of minutes.

Let me ask you, Mr. Sorn: Do you use housing allowances? Are they permitted under H-2 now?

Mr. SORN. No; we do not have housing allowances. We have to provide housing—period.

Mr. MAZZOLI. Can you give me a quick summary in a couple of minutes of the pros and cons of housing allowances? I mean a reasonable one—not \$5 a day, but a reasonable housing allowance.

Given the fact, that if an H-2 program worked you would have a steady reliable supply of labor, no hassles from the INS, you would not have the interruption, would it be feasible to have a housing allowance?

Mr. SORN. If you accept the idea that your H-2 workers or migratory workers would be provided with free rent, then I think a housing allowance, a reasonable housing allowance could be used in lieu of available housing or housing by the grower only for those workers who come into the area away from their normal home.

Mr. MAZZOLI. If you had a situation like Mr. Norton says where the people would prefer to drive in from Mexicali, that is different; then there may have to be some kind of a transportation allowance. But I am talking about the people who are so far from their homes that they have to be housed.

Does anybody have any experience with the housing allowance? No track record for that?

Well, let me thank you all very much. It has been an excellent panel. We have been graced the last 2 or 3 days with excellent testimony from panels and groups. It has been very helpful.

We particularly appreciate the fact that there is a commonality; despite the fact you all do different things in different parts of the country, emerging from your testimony are some agreed upon positions which help us at least to see where we are going and how we can get there.

Thank you.

We will stand in recess until 1 p.m.

[Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 1 p.m., this same day.]

#### AFTERNOON SESSION

Mr. MAZZOLI. The Subcommittee on Immigration, Refugees and International Law will come to order.

It is our great privilege and pleasure and honor to welcome as our witness Father Ted Hesburgh, president of Notre Dame. Father Hesburgh's and my career span quite a while in a way because we go back together to 1952, the year that the Father as a then 35-year-old man became president of Notre Dame and I was an 18- or 19-year-old sophomore there.

We are now to a date in 1983 where we meet again to talk about a matter which has consumed as much time possibly as anything in my life. Not as much in yours, Father, because you are in world peace, education, and other matters which we appreciate. Still, it is a matter to which you have devoted a great deal of time—reform in a sensitive humane way of the Nation's immigration laws.

So, Father, we devotedly appreciate all the work you have done, and your constant willingness to interrupt a busy schedule is ap-



preciated. We welcome you and we have your statement. It will be a part of the record and we would love to hear from you.

**TESTIMONY OF REV. THEODORE M. HESBURGH, C.S.C., COCHAIRMAN OF THE CITIZENS' COMMITTEE FOR IMMIGRATION REFORM, ACCOMPANIED BY NINA K. SOLARZ, EXECUTIVE DIRECTOR**

Reverend HESBURGH. Thank you so much, Mr. Chairman.

I would like to introduce Nina Solarz, executive director of our Citizens' Committee for Immigration Reform.

Mr. MAZZOLI. Mrs. Solarz is known to us and we appreciate having you. Her husband is a distinguished and great Member of Congress, too.

Mrs. SOLARZ. Thank you.

Reverend HESBURGH. It is a pleasure to appear at our third round, hopefully the last round of hearings on this vitally important subject. I am especially pleased to be testifying before my good friends Ron Mazzoli and in a few moments, I hope, Dan Lungren, both of whom are Notre Dame graduates by the way—and to be working again with Ham Fish as I did on the Select Commission on Immigration and Refugee Policy to assist you in fashioning a just, decent, and humane immigration reform bill, something I think you are well on the way to doing.

Ron, I believe it is only because of the super-human effort which you and your counterpart in the Senate, Alan Simpson, have put forth that we are here today seriously considering immigration reform. As I reflect back over the numerous commissions on which I have served, it is obvious to me that our select commission report would have gathered dust on the shelf without your heroic efforts.

I believe your hearings last year were monumental and are great.

Mr. MAZZOLI. I agree with you, I believe we made a record that before never was made on Capitol Hill.

Reverend HESBURGH. I agree, and I salute you and Al and your valiant achievements so far and pledge my continued cooperation to make the Mazzoli-Simpson Immigration Reform and Control Act a reality this year—in 1983.

My concern with immigration and refugee policy is well known and my positions on the issues which confront—and sometimes confound—us in this area are on the record. Your bill parallels most of the recommendations of the Select Commission on Immigration and Refugee Policy and recognizes the necessity for controlling illegal migration—in other words closing the back door—while at the same time continuing legal immigration at a reasonable level—or opening the front door as we said in our report.

Specifically, our Citizens' Committee of Concerned Americans applauds the sensible and balanced manner in which your bill addresses the three intertwined issues of legalization of a substantial number of those undocumented persons currently in the United States, sanctions against employers who knowingly hire undocumented workers in the future coupled with an identification system for all of those persons legally eligible to work. It recognizes the fact that people come to this country primarily to work, and that



unless the pull of available work is demagnetized, we cannot control illegal immigration.

It also understands the absolute necessity for the development of a counterfeit resistant, nondiscriminatory means of worker identification to minimize any discriminatory aspects of sanctions.

One often thinks of sanctions as being against people, but I believe it to be also something to help people against being discriminated against. There is law against that and if you have the evidence this is very easy to prove. Perhaps more significantly, it deals with the problem of the millions of undocumented persons currently residing in the United States by offering them an opportunity to become legal residents through an amnesty program. You have recognized that we will all benefit when undocumented persons come out of the shadows in which they now live to participate fully in American life with all of the rights and benefits of citizens, although I shall have some specific recommendations to make to your subcommittee on this precise issue later in this testimony.

During the course of the debate over the sanctions provisions of the Immigration Reform and Control Act of 1982, we heard much testimony, much debate, sadness, and even rancor over the employer sanctions provisions. I believe that we should have learned something from the last 2 years, and we must resume that debate where it left off. It is necessary to encourage the process of education and even compromise and to come to grips with the real and genuine concerns of the Hispanic community, in particular, and all minority groups in fact, who fear the consequences of employer sanctions.

In my view, coupled with sanctions there must be an identification system required for all persons eligible to work. This is essential to protect prospective employees against discrimination by employers who might turn someone away because of the fear of hiring an illegal alien. I am persuaded that concerns about the abuse of privacy are not warranted under such a system. As I stated on another occasion: "What protects our society and individuals against abuse of privacy is the existence of traditions, habits, and laws which sustain our 1st, 5th, and 14th amendment rights concerning freedom and due process."

An identification system notwithstanding, however, I feel that we must exhibit extreme sensitivity to the civil rights concerns voiced by so many in the minority community and perhaps make further adjustments and create new mechanisms to deal with these concerns. As former Chairman of the Civil Rights Commission, I feel particularly drawn to the concept that to the best of our ability, we must address the genuine anxiety and real fears which people have expressed.

It seems to me that the ways in which your bill has dealt with the possible discriminatory aspects of employer sanctions by requiring the Civil Rights Commission to review the effects of the law and by creating a Department of Labor/Department of Justice task force to review complaints of discrimination are important steps in the process of minimizing any perceived employment discrimination. I commend you, Mr. Chairman, and Chairman Rodino and Congressman Barney Frank for having devised these imaginative solutions to a thorny problem.

The logic of sanctions as a means to curtail future flow of illegal immigration was recognized by the Select Commission on Immigration and Refugee Policy and also the last four administrations—both Democrats and Republicans. The logic of sanctions as a trade-off to a legalization program has not been stressed quite as much (except perhaps by Congressman Frank in his oft-quoted remark on the floor of the House of Representatives during the debate on the immigration bill that you may be able to have love without marriage, and I would add marriage without love, but not legalization with sanctions.)

For my part, for the members of my committee and for the 15 other Commissioners who served with me on the Select Commission on Immigration and Refugee Policy, legalization of a substantial number of those undocumented persons currently residing in the United States is the linchpin of any immigration reform. As we noted in the report of the Select Commission:

Qualified aliens would be able to contribute more to U.S. society once they came into the open. Most undocumented/illegal aliens are hardworking, productive individuals who pay taxes and contribute their labor to this country \* \* \*

I might add that legalization was the one issue I can remember that had unanimous support from all 16 members of our Commission. That was quite an unusual fact.

But it is also true that to many hardworking, law-abiding, Americans, who believe that our Nation must gain control over its own borders, we must provide mechanisms and assurances that massive future flows of undocumented persons will cease. This mechanism—and it is the only one I can imagine working after long years of study on this problem, this mechanism is employer sanctions—linked with an identification system for all of those eligible to work in this country. And in my judgment, a bill without a substantial employer sanctions provision with teeth in the law, will simply not pass the Congress of the United States or—worse still—satisfy the American people.

The Mazzoli Immigration Reform and Control Act of 1983 maintains the delicate balance between a fairly generous legalization program and an employer sanctions provision with civil and criminal penalties, coupled with an identification system to make it work. For my part, this is the essence of the legislation.

I have often said, Ron, it is like a three-legged stool. It won't stand by itself on two legs. It won't work without employer sanctions and employer sanctions won't work without certification.

The idea of an amnesty appears to be receiving wider support as citizens and politicians alike understand that the continued existence of a large number of undocumented aliens is harmful for American society for many reasons, including the encouragement of illegality, depression of U.S. labor standards and the neglect of health and education and that there is no possible way this Government can apprehend and deport a substantial number of illegal aliens without seriously violating the civil rights and civil liberties of many Americans.

But we must guard against the temptation to so limit the terms of a legalization program that we drastically reduce the number of



undocumented persons eligible to be legalized. The issues now are, it seems to me, the timing and the scope of an amnesty program.

The Select Commission recommended that all undocumented persons in the United States prior to January 1, 1980, would be eligible for an amnesty, with the time of residence to be determined by Congress. That was in March 1981. It is now March 1983, and I would suggest that the cutoff date for legalization be moved up to at least January 1, 1982. As we said in March 1981, in our final report to the Congress and the President:

In setting a cut-off date of January 1, 1980, the Commission has selected a date that will be near enough to the enactment of legislation to ensure that a substantial portion of the undocumented/illegal alien population will be eligible \* \* \*

In addition, we would support a residency requirement of no more than 2 or 3 years.

There was rather substantial unanimity on this point, too, in the Commission.

In my view, the idea of a two-tier legalization program also presents unnecessary problems. By overly complicating the form of the registration program and by denying family unification and basic public benefit programs to some of those who register, the intention to have a comprehensive legalization program would be frustrated. For an amnesty program to be effective, the rules must be simple, the time allotted for registration must allow for proper communications and for the inevitable process of convincing people of the good faith of the Government and the advantages of being moved out of the shadows of illegal residence into the light of citizenship.

Simplicity will make a legalization program work more effectively. A 6-year waiting period for your proposed temporary residents is too long to realistically expect a successful registration. The added burden for the Immigration Service to establish year of residency and then to keep records of time spent to meet the 6-year residency requirement creates another burden on an agency already trying to dig its way out of paper.

An amnesty program should be straightforward, as simple to administer as possible, and should rely on the cooperation of groups most able to contribute to its success.

To that end, various agencies and organizations with roots into immigrant communities, with the trust and respect of the people to be registered, should be involved. The kind of organizations I have in mind are those whose work in immigration and refugee resettlement has become the backbone of resettlement programs; religious organizations whose work for immigrants and minorities has been long noted and respected; ethnic groups whose participation in Federal programs on behalf of their constituencies are the hallmark of a vital democracy. And I would add that this is a function labor unions could well undertake for their members, many of whom are now illegal aliens.

The participation of these kinds of organizations in a registration program will be vital to a successful program. Two lessons to be learned from similar programs in other countries are the need for an appropriate time for the registration and the participation of



groups with a history of public service and the trust and respect of the people involved.

As far as legal immigration is concerned, we are in total agreement with the principle that refugee admissions should be outside any fixed ceiling on numbers of legal immigrants. We must be given flexibility to deal with world crises in a humane manner, and at the same time we need to assure adequate visa numbers for legal entry into the United States under family reunification and under independent immigrant categories.

We often seem to lose sight of the fact that it is clearly in the interests of our Nation to accept a substantial number of permanent resident aliens. I think it might be well here to quickly summarize the findings of the Select Commission regarding the positive aspects of legal immigration:

One, immigrants work hard, save, and invest, and create more jobs than they take. Thus, they contribute to economic growth in the United States. That is true even for refugees although the contribution takes place after a longer period of adjustment.

Two, immigrants rapidly pay back into the public coffers more than they take out.

Three, immigrants strengthen our pool of younger and middle aged workers, thus strengthening our social security system and enlarging U.S. manpower capabilities.

Four, immigrants strengthen our ties with other nations.

Five, immigrants strengthen our linguistic and cultural resources.

May I remind this committee that 40 percent of the Americans who win Nobel baccalaureates in this country have been born abroad. That says something about strengthening our cultural resources.

Six, immigrants and their children embrace American ideals and public values rapidly and help to renew them.

Seven, immigrants give a brilliant demonstration to the world of the advantages of a free society.

Eight, the children of immigrants acculturate well to American life and actually seem to be healthier and do better at school on the average than those of native-born Americans.

Ideally, we probably should devise a system which contains a mechanism for flexibility in the ceiling for legal immigration. The Select Commission considered an immigration council in its deliberations which would permit adjustment within admission goals set by the Congress. I still think this is a credible idea and I would urge this subcommittee to seriously consider its implementation.

A small, select council could adjust yearly numbers within a long range—perhaps 5 years—ceiling which Congress would set, thus achieving control, yet retaining managed flexibility in our system.

As we embark on the third year of debate in the Congress over a new immigration policy, it seems well to reflect on our experience with the Civil Rights Commission. It took the better part of a decade after the Commission issued its report to enact the civil rights legislation into law. And of that, about 60 percent of the Commission's recommendations eventually became Federal law.

Here we are—almost exactly 2 years from the date of the release of the recommendations of the Select Commission on Immigration

and Refugee Policy, and we are well on our way toward enactment of the Immigration Reform and Control Act of 1983. Ron, Dan, Ham, subcommittee members and friends, I salute your achievements so far and stand ready to assist you until our mutual goal—a rational, just, humane, and race-free immigration policy for this Nation—is at long last a reality.

Thank you very much.

[The complete statement follows:]

# CITIZENS' COMMITTEE FOR IMMIGRATION REFORM

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NINA K. SOLARZ  
Executive Director

## Testimony

of

The Reverend Theodore M. Hesburgh, C.S.C.

Co-Chairman of the

Citizens' Committee for Immigration Reform

Before

The House Subcommittee on Immigration, Refugees and

International Law

Washington, D.C.

March 10, 1983



Chairman Mazzoli and members of the Subcommittee, it is indeed a pleasure for me to be appearing once again before you at our third round of hearings on this vitally important subject of immigration reform. I am especially pleased to be testifying before my good friends Ron Mazzoli and Dan Lungren -- both of whom are Notre Dame graduates, by the way -- and to be working together with Ham Fish once again, as I did on the Select Commission on Immigration and Refugee Policy, to assist you in fashioning a just, decent and humane immigration reform bill.

Ron, I believe that it is only because of the super-human effort which you and your counterpart in the Senate, Alan Simpson have put forth that we are here today seriously considering immigration reform. As I reflect back over the numerous commissions on which I have served, it is obvious to me that our Select Commission report would have gathered dust on the shelf without your heroic efforts. I salute you and Al and your valiant achievements so far and pledge my continued cooperation to make the Mazzoli-Simpson Immigration Reform and Control Act a reality this year -- in 1983.

My concern with immigration and refugee policy is well known and my positions on the issues which confront -- and sometimes confound -- us in this area are on the record. Your bill parallels most of the recommendations of the Select Commission on Immigration and Refugee Policy and recognizes the necessity for controlling illegal migration -- "closing the back door" -- while at the same time continuing legal immigration at a reasonable level -- "opening the front door."

Specifically, our Citizens' Committee of concerned Americans applauds the sensible and balanced manner in which your bill addresses the three inter-twined issues of legalization of a substantial number of those undocumented persons currently in the United States, sanctions against employers who knowingly hire undocumented workers in the future coupled with an identification system for all of those persons legally eligible to work. It recognizes the fact that people come to this country primarily to work, and that unless the pull of available work is de-magnetized, we cannot control illegal immigration. It also understands the absolute necessity for the development of a counterfeit resistant, non-discriminatory means of worker identification to minimize any discriminatory aspects of sanctions. And perhaps most significantly, it deals with the problem of the millions of undocumented persons currently residing in the United States by offering them an opportunity to become legal residents through an amnesty program. You have recognized that we will all benefit when undocumented persons come out of the shadows in which they now live to participate fully in American life with all of the rights and benefits of citizens, although I shall have some specific recommendations to make to your subcommittee on this precise issue later in this testimony.

During the course of the debate over the sanctions provisions of the Immigration Reform and Control Act of 1982, we heard much testimony, much debate, sadness and even rancor over the employer

sanctions provisions. I believe that we should have learned something from the last two years, and we must resume that debate where it left off. It is necessary to encourage the process of education and even compromise and to come to grips with the real and genuine concerns of the Hispanic community, in particular, and all minority groups in fact, who fear the consequences of employer sanctions.

In my view, coupled with sanctions there must be an identification system required for all persons eligible for work. This is essential to protect prospective employees against discrimination by employers who might turn someone away because of the fear of hiring an illegal alien. I am persuaded that concerns about the abuse of privacy are not warranted under such a system. As I stated on another occasion, "what protects our society and individuals against abuse of privacy is the existence of traditions, habits and laws which sustain our first, fifth and fourteenth amendment rights concerning freedom and due process."

An identification system notwithstanding, however, I feel that we must exhibit extreme sensitivity to the civil rights concerns voiced by many in the minority community and perhaps make further adjustments and create new mechanisms to deal with these concerns. As a former Chairman of the Civil Rights Commission, I feel particularly drawn to the concept that to the best of our ability, we must address the genuine anxiety and real fears which people have expressed.



It seems to me that the ways in which your bill has dealt with the possible discriminatory aspects of employer sanctions by requiring the Civil Rights Commission to review the effects of the law and by creating a Department of Labor/Department of Justice task force to review complaints of discrimination are important steps in the process of minimizing any perceived employment discrimination. I commend you Mr. Chairman, Chairman Rodino and Congressman Barney Frank for having devised these imaginative solutions to a thorny problem.

The logic of sanctions as a means to curtail future flows of illegal immigration was recognized by the Select Commission on Immigration and Refugee Policy and the last four administrations -- both Democrats and Republicans. The logic of sanctions as a trade-off to a legalization program has not been stressed quite as much (except by Congressman Frank in his oft-quoted remark on the floor of the House of Representatives during debate on the immigration bill that you may be able to have love without marriage, but not legalization without sanctions.)

For my part, for the members of my Committee and for the fifteen other Commissioners who served with me on the Select Commission on Immigration and Refugee Policy, legalization of a substantial number of those undocumented persons currently residing in the United States is the lynch-pin of any immigration reform. As we noted in the report of the Select Commission, "Qualified

aliens would be able to contribute more to U.S. society once they came into the open. Most undocumented/illegal aliens are hardworking, productive individuals who pay taxes and contribute their labor to this country..."

But it is also true that to many hardworking, law-abiding, Americans, who believe that our nation must gain control over its own borders, we must provide mechanisms and assurances that massive future flows of undocumented persons will cease. This mechanism is employer sanctions -- linked with an identification system for all of those eligible to work in this country. And in my judgment, a bill without a substantial employer sanctions provision with teeth in the law, will simply not pass the Congress of the United States or -- worse still -- satisfy the American people.

The Mazzoli Immigration Reform and Control Act of 1983 maintains the delicate balance between a fairly generous legalization program and an employer sanctions provision with civil and criminal penalties, coupled with an identification system. For my part, this is the essence of the legislation.

The idea of an amnesty appears to be receiving wider support as citizens and politicians alike understand that the continued existence of a large number of undocumented aliens is harmful for American society for many reasons, including the encouragement of illegality, depression of U.S. labor standards and the neglect

or health and education and that there is no possible way this government can apprehend and deport a substantial number of illegal aliens without seriously violating the civil rights and civil liberties of many Americans.

But we must guard against the temptation to so limit the terms of a legalization program that we drastically reduce the number of undocumented persons eligible to be legalized. The issues now are, it seems to me, the timing and scope of an amnesty program.

The Select Commission recommended that all undocumented persons in the United States prior to January 1, 1980, would be eligible for an amnesty, with the time of residence to be determined by Congress. That was in March, 1981. It is now March, 1983, and I would suggest that the cut-off date for legalization be moved up to at least January 1, 1982. As we said in March, 1981, in our Final Report to the Congress and the President, "In setting a cut-off date of January 1, 1980, the Commission has selected a date that will be near enough to the enactment of legislation to ensure that a substantial portion of the undocumented/illegal alien population will be eligible..." In addition, we would support a residency requirement of no more than 2 to 3 years.

In my view, the idea of a two-tier legalization program also presents unnecessary problems. By overly complicating the form of the registration program and by denying family unification and basic public benefit programs to some of those who register, the



intention to have a comprehensive legalization program would be frustrated. For an amnesty program to be effective, the rules must be simple, the time allotted for registration must allow for proper communications and for the inevitable process of convincing people of the good faith of the government and the advantages of being moved out of the shadows of illegal residence.

Simplicity will make a legalization program work more effectively. A six year waiting period for your proposed temporary residents is too long to realistically expect a successful registration. The added burden for the Immigration Service to establish year of residency and then to keep records of time spent to meet the 6 year residency requirement creates another burden on an agency now trying to dig its way out of paper. An amnesty program should be straightforward, as simple to administer as possible and should rely on the cooperation of groups most able to contribute to its success.

To that end, various agencies and organizations with roots into immigrant communities, with the trust and respect of the people to be registered, should be involved. The kind of organizations I have in mind are those whose work in immigration and refugee resettlement has been the backbone of resettlement programs; religious organizations whose work for immigrants and minorities has been long noted and respected; ethnic groups whose participation in federal programs on behalf of their constituencies are the hallmark of a

vital democracy. The participation of these kinds of organizations in a registration program will be vital to a successful program. Two lessons to be learned from similar programs in other countries are the need for an appropriate time for the registration and the participation of groups with a history of public service and the trust and respect of the people involved.

As far as legal immigration is concerned, we are in total agreement with the principle that refugee admissions should be outside of any fixed ceiling on numbers of legal immigrants. We must be given flexibility to deal with world crises in a humane manner, and at the same time we need to assure adequate visa numbers for legal entry into the United States under the family reunification and independent immigrant categories.

We often seem to lose sight of the fact that it is clearly in the interests of our nation to accept a substantial number of permanent resident aliens. I think it might be well here to quickly summarize the findings of the Select Commission regarding the positive aspects of legal immigration:

- \* Immigrants work hard, save and invest and create more jobs than they take. Thus, they contribute to economic growth in the United States. That is true even for refugees although the contribution takes place after a longer period of adjustment.
- \* Immigrants rapidly pay back into the public coffers more than they take out.

- \* Immigrants strengthen our pool of younger and middle-aged workers, thus strengthening our social security system and enlarging U.S. manpower capabilities.
- \* Immigrants strengthen our ties with other nations.
- \* Immigrants strengthen our linguistic and cultural resources.
- \* Immigrants and their children embrace American ideals and public values rapidly and help to renew them.
- \* Immigrants give a brilliant demonstration to the world of the advantages of a free society.
- \* And finally, the children of immigrants acculturate well to American life and actually seem to be healthier and do better at school on the average than those of native born Americans.

Ideally, we probably should devise a system which contains a mechanism for flexibility in the ceiling for legal immigration. The Select Commission considered an Immigration Council in its deliberations which would permit adjustment within admission goals set by the Congress. I still think this is a credible idea and would urge this subcommittee to seriously consider its implementation. A small select Council could adjust yearly numbers within a long-range -- perhaps 5 year -- ceiling which Congress would set, thus achieving control, yet retaining managed flexibility in our system.

As we embark on the third year of debate in the Congress over a new immigration policy, it seems well to reflect upon our experience with the Civil Rights Commission. It took the better part of a decade after the Commission issued its report to enact civil rights legislation into law. And of that, about 60% of the Commission's recommendations eventually became law.

Here we are -- almost exactly two years from the date of the release of the recommendations of the Select Commission on Immigration and Refugee Policy, and we are well on our way toward enactment of the Immigration Reform and Control Act of 1983. Ron, Ham, subcommittee members, friends, I salute your achievements so far and stand ready to assist you until our mutual goal -- a rational, just, humane and race-free immigration policy for this nation -- is a reality.



Mr. MAZZOLI. Thank you very much for your statement.

Our colleagues have come in, Congressman Lungren and Congressman McCollum.

Contrary to what Dan heard when he came in, his degree has not been rescinded as a result of his being late. He came close, though. Another 5 minutes I would have recommended we take that degree and the ring right off.

I would yield myself 5 minutes, Father Ted, to get started.

Let me say again it is a very fine piece of testimony, very positive and I thank you for that. I know that if you want to sit down like some of the people who sat in that chair and pick your way through the bill you probably could have had a whole laundry list of things that you wanted to see different. But you limited yourself to the things that you feel are fundamental, and have given excellent testimony on behalf of the bill.

One of the things I was persuaded about in this package we put together last year, the original version of the bill, was putting into the legal immigration section the idea you talked about long and hard. That is the seed immigrants, trying to get people here not necessarily because of family connection but because of zeal, ardor, desire, intelligence, need to make a new life.

As you know, at the wisdom of the full committee last year, it was to strip the entire legal immigration section out of the bill. We have reintroduced that bill as a working document.

Do you believe that we ought to try to do something in the category of amending the preference system or setting up something that would permit the entry of people into the country who are not coming in by reason of family unification?

Reverend HESBURGH. I think it is absolutely essential to have room for seed immigrants, as I recall you had 75,000 in your quota.

Mr. MAZZOLI. Exactly.

Reverend HESBURGH. I think that is absolutely essential for success of this bill. I believe there isn't a person in this room who is here today except that—they would not be here if somewhere up the line two, or three, or four generations back, seed immigrants, people with a desire for a new life, new hope, perhaps getting away from religious persecution, or political persecution, or constant threat of wars and destruction, had not come to this country to start a new life.

We are the result of that influx in the last century and early part of this century. I think it is a marvelous part of our history what has come from that, at least I think everybody in this room would like to think they are a good part of our history because we are here because of those seed immigrants.

I think our history would lose something, our tradition would falter if we did not have a constant provision for a seed-immigrant influx. There are people in many cultures, many religions, many backgrounds, many languages, who would dream of coming to this country and starting a new life for a wide variety of motivations.

To not let them do that, to say the only way you can get here is that you have a family here, makes it almost impossible. There are, for example, many nations in Africa that don't have family here. I don't know how many people in this country are from any of those new nations in Africa. If they cannot come, it means there will be

no Africans in this country and I would say that is somewhat against our tradition.

Mr. MAZZOLI. I appreciate your saying that, Father Ted. Last year, as you know, the focus on the legal immigration which led to its excision was the fifth and second preferences in which the original bill made substantial changes. We modified the changes at the various hearings. By the time it got to full committee, they were really in very good shape. But a perception had grown that somehow we were being harsh on certain categories of people.

I think as a result of that the entire section was taken out in favor of no changes which is today's system. There was a vague hope that maybe sometime later after we see how the bill works we can go back in and make the modifications.

I wonder if you could give us a few thoughts on that, too. While that may be logical, is it likely? It has taken us years, and years, and years, to reach the point where we are talking seriously about changing the immigration laws.

If this is any kind of a predictor of the future, we may be years down the road with this new bill under the new law and never have a chance to get back in and make the modifications that we think are absolutely necessary.

Reverend HESBURGH. To be perfectly honest with you, you need a little higher ceiling than you have in the law, I think it is 270,000?

Mr. MAZZOLI. We could modify that because that causes everybody so much confusion and concern. But this category of seed immigrants or some kind of a change would be a good idea, because if the third and sixth preferences are the only two ways nonfamily-related people can come into this country.

Reverend HESBURGH. That is right.

Mr. MAZZOLI. They are oversubscribed

Reverend HESBURGH. We have backlogs of 10 or 20 years in some parts of the world.

Mr. MAZZOLI. One other thing, Father Ted. We were whipsawed back and forth and buffeted constantly last year by the GAO study which suggests that employer sanctions don't work. You and I know that even a cursory reading says they work if you want them to, and they don't if you don't want them to work. Maybe you could discuss that.

How do we answer those people who say GAO said it won't work?

Reverend HESBURGH. I think it is perfectly normal to say and there is little disagreement on this, that people want a rational, effective control of our borders which we do not have now. We are one of the few countries on Earth that doesn't control its borders. Granted, we have pretty long borders, two by sea, two by land. But the fact is they are a sieve at the moment and you have two alternatives now. You have to either militarize the border and put up a high electrical fence all the way around, and other things, which are abhorrent to the American people or the American dream. Or you do something effectively internal that will control or demagnetize that pull to come here for jobs which I understand.

It is not a bad pull, it is not immoral but the fact is we cannot employ the whole world. We are having trouble employing a few million of our own people right now, 10 or 11 to be exact.



Now, we have looked in our Commission studies over the 2 years at a wide variety of ways of controlling and the only way we felt would possibly work was the employer sanctions with adequate certification or identification that is more or less foolproof and I was looking at TV just the other night and saw that Master Card is going to replace their cards with a foolproof thing and you know Visa or American Express will be behind them.

Now if we can do that, we ought to have a way of saying this is a permanent resident and you don't hire anybody who doesn't present that evidence. And we all have to present that evidence if we change jobs or look for a new job.

Let me just say to give you an analogy, can you imagine the problem the U.S. Government would have today to collect income tax, the problem many countries have if we didn't have withholding? Who does that? The employer. Do people cheat? Very little because it is the law of the land and you get in real trouble if you cheat on it.

It is not all that difficult to check up. We don't look at every employer in the United States but the fact is we do an enormously impressive collection of income tax through withholding. Every institution withholds from salaries. We do it at the university.

It is a rather simple, unique way of getting over a big barrier. I don't know why you cannot see the same picture with employment. Once that is the law and there are criminal and civil sanctions, civil sanctions first and criminal for contempt of the law, you know where to look. You don't have to look at every employer in the United States, you look at garment workers, agricultural workers, and so on, you know where to look because that is where the abuse is now taking place.

Once that is spotchecked and a few people are caught and put in jail my guess is that people are going to be a little more careful about whom they hire.

Mr. MAZZOLI. I think that is true.

Reverend HESBURGH. As long as you have a valid certification that cannot be reproduced by a high school student in a woodshop—

Mr. MAZZOLI. Or a basement printing press, yes, that will work.

Reverend HESBURGH. Yes. If someone says to me I don't like this, I say, fine, give me an alternative. I have never heard an alternative and I think I have looked at about 100 or 200 of them and I have never seen one I have confidence in that works.

Mr. MAZZOLI. I yield to my friend from California for 10 minutes.

Mr. LUNGREN. Thank you, Mr. Chairman.

I hope this isn't going to become an event every Congress, though.

Reverend HESBURGH. No; I was saying earlier this is the third and I hope last time.

Mr. LUNGREN. Maybe you could just say a few things about one aspect of utilizing some sort of card. There are those of us on this committee who would like us to move immediately to a particular card. I think an enhanced social security card with protections you suggest would be the best way to do it. But we have been criticized by those who raise the specter of a national ID card and how this country is or has never gone that course.



What do you say to that sort of criticism of this approach in this context?

Reverend HESBURGH. I say that a national ID card is something you have to carry at all times. This card you carry when you want a job or carry when it might be helpful. There is no law that says you have to have even your social security card at all times. You can have it in a safety deposit box if you want it there as long as you know the number.

But the fact is I agree with you, I think an upgraded social security card would be useful for a variety of purposes, they are used for cashing checks, driver's license and every employment that I know of. The one we have now is ridiculously simple to counterfeit and there are millions floating around counterfeit.

They tell me the money is piling up under certain numbers where there is no one that will ever benefit from those wages being paid into those phoney numbers.

Anyway, I personally do not see this as a great threat because I have a social security card and I carry it because I never get around to memorizing the number— isn't that silly? But I don't have to.

Mr. LUNGREN. One of the other Members who was speaking to me on the floor objected to the social security card because that is not what we use it for and we ought not to use the number. I asked him to look at the voting card and the voting card we have has our name, the State, the district, and the social security number, I guess to be sure we are the right person voting.

Reverend HESBURGH. And my Indiana driver's license has my social security number on it, too. In fact, I had to get a social security number to get a license to drive.

I don't think anyone ever accused Franklin Roosevelt—except for that terrible Japanese chapter of internment—of being an anticivil libertarian, and do you know that right at the time the social security card was enacted that he put out an Executive order saying if at any time in the future this form of identification would be useful for other purposes in the United States this card may be used for those purposes.

That is an interesting Executive order that I think everybody has forgotten but I have seen it. We dug it up during the time of the Select Commission.

Mr. LUNGREN. One of the statements that you make today is somewhat different than you have expressed before which is in terms of the legalization program you suggest that the cutoff date be moved up to at least January 1, 1982. We have had a lot of argument about where the date ought to be. We had been guided in the past by the Select Commission's recommendation of January 1, 1980, as the date. As I recall one of the reasons for selecting that was the Commission felt that was approximately the date where the question of amnesty or legalization was seriously considered and you didn't want it to be viewed as a magnet for bringing people across.

Reverend HESBURGH. Exactly right.

Mr. LUNGREN. That gives me pause to change that because we are having a lot of discussion now, Members of Congress and other people, about the legalization program. It is not necessarily from

the standpoint that they don't want to legalize those who are here but they are fearful of constructing a program which will attract others believing all they have to do is get across the border and wait for the next amnesty.

Reverend HESBURGH. I agree with you that we did originally set that date because we didn't want it to be a magnet. That is when we first started talking about the possibility of amnesty.

Amnesty has been a big question mark since that. I am delighted we are still talking about it.

Mr. LUNGREN. I don't use the word any more. I say "legalization".

Reverend HESBURGH. I know. Since we picked that date for that purpose and since 2 years have gone by another purpose for which we picked that date was we didn't want to have a big block of people not included in the amnesty and if you could concede that this year there will be a rather large number of people coming in as there were last year and the year before, you could conceivably even think the amnesty goes through as I assume it will and I wouldn't think you could get a decent law without it today unless you want a military roundup as we had in the time of Mr. Eisenhower, a million people rounded up and pushed over the border on two different occasions.

But I think if you are going to get it in there, it would be too bad to put it in and find you have got still 2 or 3 million people in the shadows.

Now, people might say, well, we are worried about those large numbers. I would remind the committee that amnesty at its best is hard to pull off. I was on President Ford's Amnesty Committee for Vietnam offenders and we had a world out there of about 500,000 civilians and 500,000 veterans and I think we turned up a total of 20,000 people to show up for amnesty because there were so many hooks on the program that people just were afraid to come in for fear they would wind up in jail.

So the only people we really got in the first instance were the people already in jail and could get out if they applied, literally. We started with those people and only those people. Nobody until we started advertising the program showed up.

To get back to this program, I think it has to be simple. You don't want to leave too many people in the wake and while I think our original idea of not making it a magnet was an important consideration I think now there has been so much discussion about it and so much uncertainty, I wouldn't worry if we had the same relation in time between when we wrote that report and when the cutoff was that if we just moved the whole thing forward, and it involves 2 more years, you might not be faced with a problem of amnesty program which simply takes care of a couple of million people who are in the country working, settled, doing good things presumably and not adding to the people here because they are already here, and I assume they will not be amnestied if they are not working and supporting themselves and not in trouble.

I can understand your original argument and it is one of the facts that we did this because of not having that magnet effect. I think today because it has been talked about so long and with so much uncertainty that I don't worry that much about the magnet.



I would worry more about a couple million people out there in the shadows.

Mr. LUNGREN. Let me address something you did not mention in your statement but I would like your ideas on it.

Do you believe that if we were to do a better job at cutting off the flow across the border and we were to have employer sanctions double that—we would have sufficient domestic labor to take all the jobs now taken by those who are illegally here?

Reverend HESBURGH. Dan, I can only tell you that the studies we looked into during the time of the Select Commission indicated that towards the end of this decade—in the late 1980's and early 1990's—we are probably going to have problems. It seems silly when we talk about 11 or 12 million unemployed but our studies all show that presuming prosperity and presuming the normal growth of the country that in certain sectors of the country, probably agriculture and probably other sectors, we would be short of manpower.

Let me give you the figure which is very interesting because I know this because of the educational implications. All those that will be going to school between now and the year 2000 are already born, at least to the university.

So we know what that cohort is. I can tell you it is 23.7 percent lower than what it is today between now and the year 2000.

We have some real problems coming up because we are losing about a quarter of our market and there is no speculation about this, those that are our market are already born and they will just have to grow up and get through elementary and secondary.

Mr. LUNGREN. I am trying to help you out, I have three, but I cannot do it all by myself.

Reverend HESBURGH. Yes; but it is a fair statement in answer, we will have labor needs up the line and we will probably have to adjust to those somehow.

Mr. MAZZOLI. The gentleman from Florida is recognized for 10 minutes.

Mr. MCCOLLUM. As the only member of the panel not a Notre Dame graduate I want you to know the University of Florida doesn't play Notre Dame in football.

Reverend HESBURGH. We will have to make you an honorary.

Mr. MCCOLLUM. I had a question primarily in one area you did not discuss today at all and it seems to me the two areas that get more attention is legalization and employer sanctions and with understandable reasons. You touched on one that I think is very important and isn't getting attention for reasons of politics right now and that is the question of legal immigration and allowing for folks to come in who are seed immigrants and I strongly favor that and I appreciate your saying something about it.

The second area of the original effort in the broad sense was the one I was referring to that really you didn't touch on and that is the question of dealing with the hearings, the asylums, exclusions, deportations, the adjudication area.

I listened the other day when Mr. Nelson, our new INS Commissioner related to us there are now 86,000 asylums pending in this country. He said we are gaining about 2,800 a month. I know from statistics provided to me from the Miami office that of the 1,100 or

so folks who were released from KROME, the Haitian folks, only 66 of them as of 2 weeks ago had completed hearings on their asylum applications and only 6 had been resolved.

I think that this bill we have drafted is a vast improvement in the adjudication area over what presently exists. But we have had testimony and there have been those expressing interest who are not completely satisfied for a couple of reasons.

The minorities are concerned that the legislation in its present form will not give them their full measure of due process. There is a concern that we are taking away some court involvement which otherwise would be available. There are those who feel on the other hand that the legislation still has loopholes in it that will not allow for the speedup of the process.

The double-barreled problem we are trying to address and all of us are concerned with, is both providing due process for those claiming asylum and providing a way of getting the whole system unclogged so that we don't have people sitting around here for what has been estimated to be 2 years at a minimum before the routine asylum determination is made.

Do you still—even though I recall your testimony last year saying that you didn't have great strong feelings about it if I am correct—personally prefer an article I court and would you urge that on us this year?

Reverend HESBURGH. Yes, I do. The reason is—and again I don't think anybody is going to accuse me of being against civil liberties because I spend a lot of my life fighting for them—but it seems to me given the numbers involved and basic illegality of people just ignoring the laws that govern our borders and coming in and saying give me my rights, I am here, you cannot treat people like barbarians, there is a certain basic treatment but the legal method is so that you can tie it up for years.

I get back to the fundamental aspect that justice delayed is justice denied. It is a terrible thing for people to come for freedom and sit in jail for 2 or 3 years before they get a chance to discuss their case.

I think we have to find a way that streamlines with maybe one normal appeal but not a whole string of appeals that can be strung out over years and years and years and have a new court if you will with a simple appeal mechanism and then a decision.

In many ways I think you are much more fair to a person to decide yes, you can come in or no, you cannot come in and get asylum, than to have them sit in jail 2 or 3 or 4 years living in the Twilight Zone.

People don't only have one life and I don't think that if they are not criminals they shouldn't spend it in jail. If they are seeking to get into a country through something called asylum which is a legitimate way of appealing, they may get it or not but at least they ought to have a fair shot at it, it should be a quick process, we should get rid of this backlog, and I am for doing it in an effective way that does allow for appeal but not endless appeals.

Mr. McCOLLUM. I think you would agree that what we have in the bill is a movement in that direction.

Reverend HESBURGH. Yes; I think it is a good movement in that direction and I favor it personally.



Mr. McCOLLUM. You would prefer if we took it one step further and put the cloak of the court on it and managed to tighten it more than it is today in that sense?

Reverend HESBURGH. Yes, provided you just don't string it out forever. That I think is a very bad thing.

Mr. MAZZOLI. The gentleman has 5 more minutes.

Mr. McCOLLUM. I am about to shift, I am glad you didn't cut me off.

We have had considerable discussion both in debate on the floor of the House and here in this hearing chamber with the Hispanic community and the congressmen particularly who are of the Spanish origins about their fears of employer sanctions and to some extent you addressed that today, but I would like to ask you how you would respond to the specific criticisms that they make time and again with respect to the fact that any employer sanctions regardless of whether it is the Civil Rights Commission involvement or anything else, will result in discrimination against people of color who are seeking employment, that is that employers are going to simply automatically with employer sanctions tend to say, gee, I may get penalized if I hire someone by mistake and therefore I am not going to hire anybody that is of color.

Would you address that criticism for us?

Reverend HESBURGH. I think that is a phoney argument to put it as bluntly as I can because we already have laws about discriminating in employment. On top of that we buttress this by a card which says this person is eligible for employment.

Now, it is one thing to come in and a fellow says I don't want to get in trouble so I won't hire this person who looks or talks foreign but it is another entire thing if you come in and show your card that you are eligible, it is a very simple way of getting around discrimination which presently exists, and the employer has no way out of that one.

If someone comes in and gives him a card validating their eligibility for employment, then if they don't employ them there is a law that covers that immediately. I helped pass that law in the Civil Rights Commission. That law is there. I think this argument is a phoney argument. I don't think it holds water.

I think it is a latent expression you don't want any controls on immigration. I don't think anybody is at that point today looking at the future of this country.

Now, I feel rather strongly on this because I have to say again I have spent a good deal of my life concerned about Hispanic problems and I say if this is a real worry I don't know where the worry comes from because the discrimination is there now and this is a way of removing the reason for discrimination.

You cannot argue that you look or talk foreign, if you have a card that says you are eligible for a job there is no argument against that factual evidence. To me that is the buttressing of a person's right, not a reason for discrimination. It is a removal of discrimination.

I know a lot of friends in southern California, down where Dan is from, who go back and visit their relatives in Mexico; they are American citizens now and they come back over the border and they get hassled by the border guards because they look foreign. If

they had this card, they wave the card and walk through. You hassle them, then you are in trouble with the law.

I think this card can be a great benefit to people who are presently being discriminated against. That is why we put it in. I simply cannot see the argument that it is going to be a means of discrimination.

Mr. McCOLLUM. This has been my conclusion, and I am pleased to hear you relate in such articulate fashion today because we need to have the support of the Hispanic community to make this work. We very badly need that support. The real debate over the issues in this bill boil down to primarily agricultural and business interests and refinement of the employer sanctions and should not be phrased in the discrimination area.

Reverend HESBURGH. And Mr. McCollum, let me add something that I think is important for the committee. I was over a couple weeks ago testifying to Senator Simmons' committee, and he said to me or he asked me, "What do you think will happen if we don't get the law through this year?" I said I will tell you what will happen, this may be the last time we have to get legalization in, and we are not going to get legalization in unless we have the border under control, and that is employer sanctions and certification. If we don't do it this year my guess is, given a look at the problems in Mexico and Central America today, we are going to have an absolute flood across that border.

We are having it now if you look at the figures. I have looked at the figures the last couple months and they are double last year and in some points—Chula Vista, for example—several times the number of last year.

I would say that at that point we are not going to get what I think here is a rational nonracist compassionate law, we are going to get a law that is full of backlash, ethnic recrimination, anti-Hispanic, all kinds of military maneuvers to round people up and shove them across the border and there won't be any cards to prove you are right or wrong in being here.

I think that if we don't get this thing through now, God only knows what kind of bill we will get through once the situation gets worse, as indeed it will if we don't bring it under control.

Mr. McCOLLUM. You have complimented the committee, but I wish to compliment you for the ardor with which you have pursued this, not only with us but in the Select Commission. As I yield back my time, I say thank you.

Reverend HESBURGH. Thank you, Mr. McCollum.

Mr. MAZZOLI. Thank you very much.

I thought your statement was very eloquent because it deals directly with something that is on the mind of all of our members. What happens if this doesn't pass?

Certainly the sun will rise and set and the tides will rise and fall, but we will have missed a precious moment in time to do something that needs to be done. We have a chance to do it without the pressure of groups who are howling and screaming for some quick fix or quick answer.

The question you asked, "If not this, what, and if not now, when?" is great.



Reverend HESBURGH. One other thing: We can learn something from history; you remember the Santiana phrase: "Either we learn from history or we are fated to repeat its mistakes." There are a lot of mistakes in the history of immigration law. The biggest mistake was the first and only other Select Commission, during President Teddy Roosevelt's term of 1907 to 1910, and they came out with a racist report and what they got was a racist bill in the early 1920's.

That went all the way through to the early 1950's, then we got the McCarran Act, a law coming out of fear—fear of communism and a number of other things—and it wasn't until 1965—think of how many years into our national history—we finally got rid of racial quotas, and that is not speaking very well for the history of this legislation and this particular area.

Now for the first time in our history we have a chance to take a calm, reasoned look at it. We know things are out of control. We don't argue that. It is a fact. The fact we are talking about legalization of 5.5 or 8 million people or 3.5 to 6 million people is evidence of that.

But if we don't do it now I fear to think of what kind of a law we are going to have when it is done out of hatred, out of ethnic feelings, out of all kinds of irrational fears, and done under great pressure.

Mr. MAZZOLI. I thank you, Father.

I don't think there is any one of us that feels that this is a perfect bill. It is a working document. We will make amendments to this one. No matter what happens on the floor we will still never produce the perfect document. You simply cannot, when dealing with the world in which we live, and 535 Members of Congress from all the States and territories.

But I think you have certainly gone far in your statement today, and we deeply appreciate it, to recognize the efforts we have made to keep the bill symmetrical, humane, and truly sensitive to the needs of not just our Nation but of this globe, the need to reflect in American law its moral leadership in the world. We believe this bill, or in some form like it, will indeed do that.

That is why we are so devoted to this despite the difficulties and torment of it.

Mr. LUNGREN. Mr. Chairman, I want to address one thing that Father Hesburgh didn't address, and it is the next panel's subject too, so I would like to address you in your position as a university president. We have in this bill a waiver on our restrictions which require foreign students when they graduate to return to their home country for 2 years before they can come here to work in a university or high tech field.

One of the reasons for that is we don't want to be causing a brain drain from some of these other places. We also have a concern about jobs for our own graduates that are educated in these areas. We have been convinced, however, that at present our universities desperately need these people to be professors. Generally, high tech industries need them as well.

We have put a sunset provision in the bill of 1989, with the hope that both the industry people and the university people will understand that we think more ought to be done in both spheres to edu-

cate our own people in basic sciences and high tech areas. We wanted to communicate that both the universities and the industries cannot count on us in 1989 to merely say, OK, you have not done a better job, we are going to give you more lead time.

What I would like to ask is, whether there is a recognition in the higher education community and what needs to be done or what is being done to do a better job of attracting American students in these areas, educating American students, and I suppose paying your faculty in those areas a little higher so they won't go immediately into industry?

Reverend HESBURGH. I would have to tell you, Dan, and I am being, as honest as I can about this—we were under pressure during the time of the Select Commission from professional engineering societies who felt threatened mainly in industries turning over quickly. This is a cyclical thing in the aviation and other type industries, aerospace industries I should say.

It was the majority wish of the Commission to cut out as many exemptions as they could. We were kind of cleaning house I think at the time. I am perfectly conscious—because I face the problems daily—of the educational community's concern about this. I did not make common cause with them. I said you better exempt me when everybody signed this because I felt as Chairman of the Select Commission at least I had to reflect the majority view of the Commission, whatever my view.

But you asked me a factual question and I can tell you that 10 percent of the faculty positions—this is on a national basis—in engineering are open today without being filled and that many of them that I sign for, I have to sign off on new faculty, are people educated and born abroad, some born abroad and educated here but generally they are from India, China or somewhere else. We have a real crisis in hiring science and engineering faculty. I think the basic reason is that we have slipped so much in our science and mathematics teaching at the elementary and secondary level that kids are afraid when they get to college that they cannot cut it in engineering and science and maybe they cannot, so that it is a problem that is a systemic problem and I think the National Science Foundation has now begun to make very real efforts in that area.

I can assure you having been on the National Science Board at the time of Sputnik we made enormous efforts at that point and we redid all our basic biology, physics, math books and reeducated 60 percent of the high school teachers of the country. That generation passed on and we have to do that job again and get our young people some confidence in math and science. That is the long range answer to this problem. I cannot oppose the fact you are making it possible to give a short range answer to what is really a crisis in higher education today.

I appreciate that although I said in all honesty I had to reflect the majority view of the members of my Commission.

Mr. MAZZOLI. Thank you very much.

Father, Thank you, and Mrs. Solarz, thank you.

Reverend HESBURGH. Mrs. Solarz reminded me on the very complicated question on the courts, Peter Levinson here did most of our basic study on that question on the Select Commission and I



am delighted to see him here because I am sure he knows about 10 times more about this than I do.

Mr. MAZZOLI. You may have ruined your working relationship on this side of the table when you said that. But he is a good man.

Reverend HESBURGH. He will bring great light to this subject.

Mr. MAZZOLI. Thank you again, Father, and have a nice trip back home.

The next panel, arrayed from your right to your left:

Mr. Marvin Baron, president-elect, National Association for Foreign Student Affairs.

John Calhoun, director of Business Development, Intel Corp., on behalf of American Electronics Association.

Dr. Paul E. Gray, president, Massachusetts Institute of Technology, on behalf of the American Association of Universities.

Mr. Irwin Feerst, president, Committee of Concerned Electrical and Electronics Engineers.

Dr. David Lewis, American Association of Engineering Societies.

And farthest left will be Billy Reed, director, American Engineering Association.

Yes, you can come to the table, and please limit yourselves to 5 minutes in your opening statement.

First we have Mr. Baron, president-elect of the National Association for Foreign Student Affairs.

**TESTIMONY OF MARVIN BARON, PRESIDENT-ELECT, NATIONAL ASSOCIATION FOR FOREIGN STUDENT AFFAIRS; JOHN CALHOUN, DIRECTOR OF BUSINESS DEVELOPMENT, INTEL CORP., ON BEHALF OF AMERICAN ELECTRONICS ASSOCIATION; PAUL E. GRAY, PH. D., PRESIDENT, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, ON BEHALF OF THE AMERICAN ASSOCIATION OF UNIVERSITIES; IRWIN FEERST, PRESIDENT, COMMITTEE OF CONCERNED ELECTRICAL AND ELECTRONICS ENGINEERS; DAVID LEWIS, PH. D., AMERICAN ASSOCIATION OF ENGINEERING SOCIETIES; BILLY REED, DIRECTOR, AMERICAN ENGINEERING ASSOCIATION**

Mr. BARON. Mr. Chairman, and members of the subcommittee, I am Marvin Baron, director of Foreign Student and Scholar Services at the University of California, Berkeley, and president-elect of the National Association for Foreign Student Affairs, the primary organization of professionals working in international education on American campuses.

NAFSA appreciates being afforded the opportunity to express its views on a provision of H.R. 1510, which has received little national attention, the enactment of which would have a negative impact on the Immigration and Naturalization Service, American higher education, and the health of important sectors of American industry.

It is our belief that there is no compelling reason to create legislation that blankets all foreign students in those categories, with no regard to the need for their professional talents in their countries and with an unwieldy system of waivers for those whose skills are needed in the United States. The indiscriminate inclusion of all

foreign students in the proposed legislation undoubtedly derives from several significant misconceptions.

The first misconception is that many, if not most, foreign students in this country are funded by government agencies in their countries or ours to meet specific developmental needs back home. Data, however, have consistently shown that fewer than 20 percent of the foreign students are funded by any government agency and that 65 to 70 percent receive their primary support from personal or family funds. The majority of foreign students thus come with their own funding and their own academic and professional goals.

The second misconception is that the overriding purpose for which American universities admit foreign students relates to manpower and development needs of other countries. Further, to believe that the ability of 15,000 foreign students to obtain immigrant status in the United States each year is sabotaging the development efforts of the Third World would be mistaken. The overwhelming majority of those who stay in the United States have come on their own behalf and have not been sent here for the fulfillment of any manpower goal. Experience clearly shows that countries, no matter what their level of development, have been able to attract American-educated nationals back home whenever jobs have been available that are rewarding, and on a professional level commensurate with the education these students have acquired. Through the imposition of a 2-year home country residence requirement, we may be able to make students leave this country, but we certainly have no way of forcing them to return to their home countries.

Viewing the basic issues in this perspective, NAFSA reaffirms that it sees no strong or clear reason to impose the 2-year home country residence requirement on all F and M students. If it is the will of Congress to create such a requirement, we believe that it should be limited to those foreign students whose education has been funded by a Government agency, in our country or theirs, or who have acquired professional skills that are badly needed at home. This would make the requirement for F and M students exactly parallel to the existing requirement for J exchange visitors.

On the whole, the requirement for the latter group has worked very well since its modification in 1970. There is great virtue in applying a system that has been tested by time rather than creating an entirely new system fraught with difficulties and inequities. Having an identical requirement for all student visa categories—F, M, and J—would have the further significant advantage of offering no incentive for students to move from one category to another. If the requirement were enacted as currently written in the bill, there would be a major flow of students to the J category since its residence requirement is not applied in a blanket fashion.

It is our strong conviction that the guiding principle of any residence requirement for foreign students should be selectivity, not all-inclusiveness; that is, it should apply only to those foreign students for whom there is a specific and important reason to make acquisition of permanent residence in the United States difficult or impossible.

It is time to turn to perhaps the most important misconception, the strongly held belief that if the residence requirement is not im-



posed on all F and M students, serious displacement of American workers will occur. Those who hold this belief do not fully recognize that a mechanism has already been created by law and regulation that has proven to be effective for the last decade, that of the labor certification process. Through this screening mechanism, no aliens are permitted to acquire immigrant status based on their skills unless it can be clearly demonstrated by an American employer that no qualified and interested American workers could be found for the position, using all reasonable, available means in the recruitment process.

There are, of course, complaints that too many aliens have been granted labor certifications, but the fact is inescapable that since creation of this mechanism there has been no significant penetration by aliens into a field in which there has been an adequate supply, or oversupply, of American workers. What more can one ask by way of protection for our workers? The Department of Labor has done a remarkable job of carrying out both the letter and spirit of the law and regulation in this difficult process, and if it is guilty of any imperfections, this can be attributed to the insistent demands made by American employers with urgent needs for skilled workers, or to the understaffing of its regional offices.

Neither of these problems will be addressed at all by the creation of a new mechanism to block the entry to aliens into the job market. Indeed, there is an enormous advantage to the existing labor certification mechanism: It can be immediately responsive to the supply and demand forces in our labor market. When, for example, American universities were faced with a serious shortage of people to teach accounting to the larger number of American students interested in business courses, the Department of Labor was able to discern quickly from the information provided by university search committees that a genuine shortage existed in this area.

If the proposed bill had been in effect at that time, our universities would have been forced to wait for 1 or 2 years for the creation of new legislation that would have been needed to add business administration or accounting to the current list of four scientific and technical fields for waiver purposes. Students at our universities would have been forced to pay a heavy price for such a delay.

We recognize that the waiver system is not intended in any way to replace the current labor certification mechanism, but it is clear that acquisition of the waiver is intended to represent a significant new hurdle for any foreign student seeking immigrant status. Why create a second obstacle course when the existing one has already proven to be effective? If the existing system is found wanting in any respect, why not make adjustments in that system?

Some would answer these questions by maintaining that if the process of employing aliens is made difficult enough, American universities and businesses will finally be forced to try harder to find and train Americans in the shortage fields. The truth is that American institutions and industries are already making all out efforts to recruit, to induce, and to train Americans in shortage fields, and in time the significant marketplace incentives should draw more Americans into those fields. If hundreds of thousands of aliens were entering our labor market, those inducements might not be present, but consider that in the last annual count, 1981,

there were only 25,000 labor certifications issued, scattered over a wide range of fields; only 1,600 were granted to aliens going into university teaching. These are hardly figures that could have a major impact on any one segment of the American labor market.

Let us move next to what may be the most significant practical reason for not creating a new screening mechanism to deter alien workers; namely, the vast bureaucracy that will absolutely be required to execute the new system of waivers. Consider the fact that the Immigration and Naturalization Service is already so seriously overburdened and understaffed that it cannot keep up with its current workload in a timely fashion. Consider further that if this legislation passes, the workload of that Service will be doubled for years to come in overseeing an employer sanction program, an amnesty program, and so forth. There is no way that the Service will possibly be able to handle the demands of the proposed waiver system unless Congress appropriates substantial amounts of new money to the Service. Given the constraints on the Federal budget for the foreseeable future, this is not very likely.

American universities and businesses already find it agonizing to be forced to wait 6 months, 12 months, perhaps longer, before they can complete the process of helping an alien to obtain immigrant status. The new process will, without a doubt, add significantly to these delays.

In the current waiver system administered by the U.S. Information Agency in connection with J visa holders, delays of 6 months are not uncommon, and that Agency is dealing with a much smaller number of waiver requests than would be the case with F and M students.

There is one last area that deserves our attention: The notion that this society, and most particularly our higher education system, should become less dependent on foreign talent. There are several serious flaws in this line of reasoning. There has never been a world-class, distinguished university anywhere on this globe that has been independent; that is, which has drawn all of its scholarly talent from within the borders of a single country. Academic disciplines simply do not recognize national boundaries. If the department of statistics or the department of chemistry at one of our institutions wants to achieve optimal excellence, it must be free to seek the best possible faculty and researchers from anywhere in the world. The ability to draw on a worldwide pool of talent has always been essential to our best universities and will continue to prove important as long as those universities seek excellence. In this light, it is clear that the inclusion of a sunset provision for those going into university teaching whereby waivers would not be available after 1989 makes no real sense at all.

There has probably never been a time in the history of this country when it has been more crucial for our academic institutions to retain their leadership in science, technology, and other academic fields. If they do not, you can rest assured that not only will the universities suffer, but also our children attending those universities, and the entire range of American industries which depend on these universities for a steady supply of finely honed talent. Our entire economic system is engaged in a worldwide struggle of monumental significance.



NAFSA does not believe that it is in the best interest of this country to significantly reduce the flexibility of our universities in seeking the best available talent. All aliens offered long-term teaching and research positions at American universities should be given access to the highest preference category available to foreign professionals without any undue impediments. Our institutions have used foreign scholars for decades in their striving for excellence and the entire country has benefited. This is not the time to move in the opposite direction. We would all lose.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you, Mr. Baron.

[The complete statement follows:]



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Statement of

Marvin J. Baron

Director, Foreign Student and Scholar Services  
University of California-Berkeley

President-elect,  
National Association for Foreign Student Affairs

before

Committee on the Judiciary  
Subcommittee on Immigration, Refugees &  
International Law

U.S. House of Representatives

concerning

Immigration Reform Proposals

March 10, 1983

Mr. Chairman and members of the Subcommittee, I am Marvin Baron, Director of Foreign Student and Scholar Services at the University of California, Berkeley, and President-elect of the National Association for Foreign Student Affairs, the primary organization of professionals working in international education on American campuses. NAFSA appreciates being afforded the opportunity to express its views on a provision of H.R. 1510 which has received little national attention, the enactment of which would have a negative impact on the Immigration and Naturalization Service, American higher education, and the health of important sectors of American industry. The provision in question would impose a two year home country residence requirement on all F and M students in this country, forcing them to return home for two years after completion of their studies before they would be permitted to seek permanent residence, or any other visa status, for employment in the United States.

It is our belief that there is no compelling reason to create legislation that blankets all foreign students in those categories, with no regard to the need for their professional talents in their countries and with an unwieldy system of waivers for those whose skills are needed in the United States. The indiscriminate inclusion of all foreign students in the proposed legislation undoubtedly derives from several significant misconceptions that have made their way into the minds of different groups of Americans.

The first misconception is that many, if not most, foreign students in this country are funded by government agencies in their countries or ours to meet specific developmental needs back home. Data in Open Doors have consistently shown that fewer than 20% of the foreign students are funded by any government agency and that 65-70% receive their primary support from personal or family funds. The majority of foreign students thus come with their own funding and their own academic and professional goals.

The second misconception is that the overriding purpose for which American universities admit foreign students relates to manpower and development needs of other countries. This is one of the most significant missions we have in international education, but the truth is that American institutions have many diverse reasons for admitting foreign students: to bring educational and cultural enrichment to our campuses; to help our students gain a deeper understanding of the rest of the world; to assist



our graduate departments to continue critical research programs in times of temporary shortages of American doctoral students; to enhance scholarly and scientific collaboration; and, for some schools, to help maintain an adequate pool of qualified applicants during a period of decline in the number of Americans of college age. At the same time, a number of parallel national priorities are served by the presence of foreign students. Any system of disincentives that would diminish the number of foreign students in this country would thus harm both national and institutional interests.

The next misconception lies in the belief that most foreign students never leave the United States after finishing their studies. Claims that 40,50, or even 60% remain in the United States have been offered in recent years in the national media. Using data from the Immigration and Naturalization Service and Open Doors, it would appear that the actual number of foreign students adjusting to immigrant status after completion of their studies is about 15,000 per year, or about 15% of those who have finished academic programs here. These are hardly staggering figures when seen in the context of the total number of foreign students currently in the United States (over 300,000) or the total number of Americans in the job market (over 100 million). It is not surprising that higher figures have emerged in the national consciousness since many news stories have referred to the numbers of illegal aliens in the United States (many millions) in the same breath in which they alluded to foreign students who stay in this country. The immigration issues relating to these two groups must clearly be seen in separate and distinct frameworks.

Beyond numbers, however, it is important to address several "brain drain" issues. Government agencies and many of our institutions have expended enormous sums of money and time in the last 25 years in educating foreign students to meet essential manpower needs in developing countries throughout the world. The extent of the success achieved in this area has rarely been given much attention, but these efforts have made major contributions to the development process in country after country. The commitment to these goals remains alive and strong at the national and institutional levels and in the ongoing work of countless members of our Association. There is no demonstrable need, however, to augment these efforts by attempting to send large numbers of foreign students back to countries in which their professional skills may not be needed or even usable. It is a serious mistake,

thus, to believe that the ability of 15,000 foreign students to obtain immigrant status in the United States each year is sabotaging the development of the Third World. The overwhelming majority of those who stay have come on their own and have not been sent here for the fulfillment of any manpower goal.

Furthermore, experience clearly shows that countries, no matter what their level of development, have been able to attract American-educated nationals back home whenever jobs have been available that are rewarding, and on a professional level commensurate with the education these students have acquired. Through the imposition of a two year home country residence requirement, we may be able to make students leave this country, but we certainly have no way of forcing them to return to their home countries. Indeed, we know that many American-educated professionals work in third countries when their own countries offer few opportunities in their disciplines. The nature of job openings in the home country can thus be seen as the hinge on which most "brain drain" questions turn.

Viewing the basic issues in this perspective, NAFSA reaffirms that it sees no strong or clear reason to impose the two year home country residence requirement on all F and M students. If it is the will of Congress to create such a requirement, we believe that it should be limited to those foreign students whose education has been funded by a government agency, in our country or theirs, or who have acquired professional skills that are badly needed at home. This would make the requirement for F and M students exactly parallel to the existing requirement for J Exchange Visitors. On the whole, the requirement for the latter group has worked very well since its modification in 1970. There is great virtue in applying a system that has been tested by time rather than creating an entirely new system fraught with difficulties and inequities. Having an identical requirement for all student visa categories (F,M, and J) would have the further significant advantage of offering no incentive for students to move from one category to another. If the requirement were enacted as currently written in the bill, there would be a major flow of students to the J category since its residence requirement is not applied in a blanket fashion. It is our strong conviction that the guiding principle of any residence requirement for foreign students should be selectivity, not all-inclusiveness, i.e. it should apply only to those foreign students

for whom there is a specific and important reason to make acquisition of permanent residence in the United States difficult or impossible.

At this time there are provisions in both the Senate and House bills that would limit the granting of waivers of the home country residence requirement to foreign students in certain scientific and technical fields. While the shortages in those areas may be more acute, we do not believe the national interests would be well served by rendering it impossible for social scientists, philosophers, musicians, and artists who have studied in this country to stay on, especially if their talents have earned them offers of faculty positions at our universities. Gifted aliens in many different disciplines have made major contributions to the educational and cultural wealth of this country and we do not believe that any discipline should be excluded from eligibility for a waiver. Since needs in both the academic and industrial sectors of our society seldom remain constant or predictable, we also believe that it would be short-sighted to establish any numerical limitation on the number of waivers that can be granted under whatever residence requirement system may finally be established.

It is time to turn to the final, and perhaps most important, misconception, the strongly held belief that if the residence requirement is not imposed on all F and M students, serious displacement of American workers will occur. Those who hold this belief do not fully recognize that a mechanism has already been created by law and regulation that has proven to be effective for the last decade, that of the labor certification process. Through this screening mechanism, no aliens are permitted to acquire immigrant status based on their skills unless it can be clearly demonstrated by an American employer that no qualified and interested American workers could be found for the position, using all reasonable available means in the recruitment process. There are, of course, complaints that too many aliens have been granted labor certifications, but the fact is inescapable that since creation of this mechanism there has been no significant penetration by aliens into a field in which there has been an adequate supply (or oversupply) of American workers. What more can one ask by way of protection for our workers? The Department of Labor has done a remarkable job of carrying out both the letter and the spirit of law and regulation in this difficult process, and if it is guilty of any imperfections, this can be attributed to the insistent demands made by American employers with urgent needs for



skilled workers, or to the understaffing of its regional offices. Neither of these problems will be addressed at all by the creation of a new mechanism to block the entry to aliens into the job market. Indeed, there is an enormous advantage to the existing labor certification mechanism: it can be immediately responsive to the supply and demand forces in our labor market. When, for example, American universities were faced with a serious shortage of people to teach Accounting to the larger number of American students interested in business courses, the Department of Labor was able to discern quickly from the information provided by university search committees that a genuine shortage existed in this area. Qualified individuals were thus available within a relatively short period of time to teach essential courses. If the proposed bill has been in effect at that time, our universities would have been forced to wait for one or two years for the creation of new legislation that would have been needed to add Business Administration or Accounting to the current list of four scientific and technical fields for waiver purposes. Students at our universities would have been forced to pay a heavy price for such a delay.

We recognize that the waiver system is not intended in any way to replace the current labor certification mechanism, but it is clear that acquisition of the waiver is intended to represent a significant new hurdle for any foreign student seeking immigrant status. Why create a second obstacle course when the existing one has already proven to be effective? If that existing system is found wanting in any respect, why not make adjustments in that system? Some would answer these questions by maintaining that if the process of employing aliens is made difficult enough, American universities and businesses will finally be forced to try harder to find and train Americans in the shortage fields. The truth is that American institutions and industries are already making all out efforts to recruit, to induce, and to train Americans in shortage fields, and in time the significant marketplace incentives should draw more Americans into those fields. If hundreds of thousands of aliens were entering our labor market, those inducements might not be present, but consider that in the last annual count made (1981) there were only 25,000 labor certifications issued, scattered over a wide range of fields; only 1600 were granted to aliens going into university teaching. These are hardly figures that could have a major impact on any one segment of the American labor market.

Let us move next to what may be the most significant practical reason for not creating a new screening mechanism to deter alien workers, namely the vast bureaucracy that will absolutely be required to execute the new system of waivers. Consider the fact that the Immigration and Naturalization Service is already so seriously overburdened and understaffed that it cannot keep up with its current workload in a timely fashion. Consider further that if this legislation passes, the workload of that Service will be doubled for years to come in overseeing an employer sanction program, an amnesty program, etc. There is no way that the Service will possibly be able to handle the demands of the proposed waiver system unless Congress appropriates substantial amounts of new money to the Service. Given the likely constraints on the federal budget for the foreseeable future, this is not very likely.

The result would mean intolerable delays. American universities and businesses already find it agonizing to be forced to wait 6 months, 12 months, perhaps longer before they can complete the process of helping an alien to obtain immigrant status. The new process will add significantly to these delays, without a doubt. In the current waiver system employed by the United States Information Agency in connection with J visa-holders, delays of 6 months are not uncommon, and that agency is dealing with a much smaller number of waiver requests than would be the case with F and M students. No one's interests are well served when a complex new system is introduced, with all the attendant bureaucratic problems and delays, if an existing system can serve essentially the same purposes. I think there is general agreement on that principle in Washington, across party lines.

There is one last area that deserves our attention: the notion that this society and most particularly our higher education system, should become less dependent on foreign talent. There are several serious flaws in this line of reasoning. There has never been a world-class, distinguished university anywhere on this globe that has been "independent", i.e. which has drawn all of its scholarly talent from within the borders of a single country. Academic disciplines simply do not recognize national boundaries. If the Department of Statistics or the Department of Chemistry at one of our institutions wants to achieve optimal excellence, it must be free to seek the best possible faculty and researchers from anywhere in the world. The ability to draw on a world-wide pool of talent has

always been essential to our best universities and will continue to prove important as long into the future as those universities seek excellence. In this light, it is clear that the inclusion of a sunset provision whereby waivers would not be available after 1989 for those going into university teaching makes no real sense at all.

There has probably never been a time in the history of this country when it has been more crucial for our academic institutions to retain their leadership in science, technology and other academic fields. If they do not, you can rest assured that not only will the universities suffer, but also our children attending those universities, and the entire range of American industries which depend on these universities for a steady supply of finely honed talent. Our entire economic system is engaged in a world-wide struggle of monumental significance. NAFSA does not believe that it is in the best interest of this country to significantly reduce the flexibility of our universities in seeking the best available talent. All aliens offered long-term teaching and research positions at American universities should be given access to the highest preference category available to foreign professionals without any undue impediments. Our institutions have used foreign scholars for decades in their striving for excellence and the entire country has benefited. This is not the time to move in the opposite direction. We would all lose.



CONCLUSIONS

1. There is no compelling reason to apply the home country residence requirement to all F and M students. If a return requirement is to be imposed on these students, it should apply only to those students who have had government support for their education or who have acquired skills badly needed in their home countries. Making the requirement for F's and M's identical with the existing system for J's would have significant advantages.

2. There is no indication that the current level of "brain drain" is creating serious problems for developing countries. Many difficulties in those countries stem from the lack of professional job opportunities. Most foreign students in the F and M categories come with their own funding and for their own academic objectives. Many who come with government funding or for specific manpower training are already required to return home under the conditions of the J visa.

3. Many diverse national and institutional interests are served by the foreign student presence on our campuses. Disincentives for study in this country that would diminish the number of foreign students here would be injurious in a number of important respects.

4. A system is already in place that does an effective job of protecting American workers. The labor certification mechanism has been proven over a ten year span of time. No additional barriers are needed.

5. Creation of a new system of obstacles for foreign students who wish to remain in this country would lead to the creation of a vast bureaucracy that would add workload levels for INS that would be extremely difficult for them to handle. Universities and other prospective employers would be faced with intolerable delays.

6. American universities have a historical and ongoing need to access a world-wide pool of talent in their search for academic excellence. It is essential that there be no numerical limitation on the waivers that can be granted, that there be no limit on the disciplines that qualify for waivers and no sunset clause that would phase out waivers for universities and industry after 7 years. Access to the best available talent by both higher education and industry is a significant factor in the American struggle to maintain leadership in areas that are essential to the long term health of our society.

BIOGRAPHY

of

Marvin J. Baron

Director, Foreign Student and Scholar Services, University of California,  
Berkeley

President-elect, National Association for Foreign Student Affairs

Education

A.B., Rice University

M.A., Stanford University

Publications

"The Foreign Student and Immigration Matters," author

"Advising, Counseling, Helping the Foreign Student," editor and co-author

"NAFSA Adviser's Manual of Federal Regulations Affecting Foreign Students  
and Scholars," co-author

"Faculty Member's Guide to U.S. Immigration Law," co-author

"Relevance of U.S. Graduate Education to Students from Developing  
Countries," editor and co-author

NAFSA Positions (present and former)

Generalist Consultant, NAFSA Field Service

Member, NAFSA Board of Directors

Member, Government Regulations Advisory Committee

Member, NAFSA-AID Committee

Member, NAFSA Task Force on Priorities

National Conference Chairman

Regional Chairman, NAFSA Region I

Related International Education Activities

Member, CSS Committee on Foreign Student Finances

Member, Board of Trustees, African Scholarship Program of American  
Universities

Foreign Travel

Graduate Fulbright year in Germany, 1955-56 as student in Germanics

Visit to East Africa as member of ASPAU interview team for one month, 1967

Visit to Taiwan and Hong Kong to meet with educational leaders for three  
weeks, 1969

Participation in Conference on U.S.-German exchanges, for two weeks, 1972

Part of faculty for U.S. Department of State sponsored Workshop on

U.S. Higher Education, in Brazil, Peru and Ecuador for two weeks, 1977

Visit to Taiwan to meet with educational leaders for two weeks, 1983

Mr. MAZZOLI. Mr. Calhoun, you are recognized for 5 minutes.

Mr. CALHOUN. I'm John Calhoun, director of business development at INTEL Corp. I'm appearing before you today on behalf of the American Electronics Association which represents over 2,000 high technology companies in 43 States.

AEA is primarily concerned with one provision in H.R. 1510, the section dealing with foreign students.

If the Senate version of the bill is passed, it will greatly limit industry's ability to solve the shortage of trained technical manpower.

We are more amenable to the language in the House version and want to thank this committee for its recognition of our problems. We want especially to thank Chairman Mazzoli for visiting us in California last fall and opening a dialog with the electronics industry.

Now I would like to discuss the problem that we face today that is that a shortage of electrical and computer engineers exists that limits our industry's ability to grow and compete on the world market. We are currently dependent on our ability to hire immigrants, primarily students graduating from U.S. universities, in order to compensate partially for the total shortage. If this source of talent is removed from us before an adequate supply to trained U.S. citizens becomes available, then there will be serious negative repercussions on our industry, our economy, and our national defense without any material offsetting benefits to the United States.

The Bureau of Labor Statistics estimates that U.S. employment of electrical engineers will grow from nearly 300,000 in 1978 to about 450,000 by 1990.

Despite the growing demand, the number of new engineers produced by U.S. universities has not kept pace. Engineering schools have started to cap and even cut back on enrollments due to lack of faculty, equipment, and facilities.

Viewed from the international perspective, the United States clearly lags in the quantity of engineering graduates.

For every 10,000 population, 70 in the United States and 400 in Japan are engineers. Engineering accounts for only 6 percent of the total undergraduate degrees awarded in the United States, but 21 percent in Japan, 35 percent in the Soviet Union, and 37 percent in West Germany.

This is occurring at a time when competition from abroad is increasing at a rate that is alarming.

The problem is absolutely one of a shortage and not one of lower-cost labor. The competition for engineers keeps the salaries of all engineers up. Residents of Silicon Valley are bombarded by billboards, radio, and TV ads of companies seeking engineers, even in the depth of the recession. Companies offer bounties of \$500 to \$2,000 to employees who recruit a new engineer for the firm.

The shortage is so severe that Intel has been forced to open design facilities in Israel, France, and Japan simply due to the availability of highly skilled technical talent. Costs of operating an R&D facility in these developed countries are no lower than for operating a similar facility in the United States.

We must consider therefore what happens if U.S.-trained foreign students, are forced to leave this country.



First, will be the export of nonengineering jobs out of the United States via one of two routes. Either U.S. firms will be forced to relocate facilities overseas or they will simply lose ground competitively to foreign firms. In either case, U.S. employment will suffer. At Intel, there are five nontechnical jobs for every employed engineer. In the economy as a whole, 27 jobs depend on each engineer. The growth in employment that our high tech industries can generate to compensate for cutbacks in "smokestack" American will be "cut off at the knees" if engineering talent in unnecessarily restricted. Engineers create jobs for other Americans.

Those engineers who argue for the student restriction aren't considering the impact on other U.S. citizens who will benefit from job growth that comes when companies have the needed technical talent.

Another problem will be a further roadblock in our universities' efforts to hire professors in the engineering schools in order to increase the supply of American graduates as will be discussed at greater length by the representative of the AAU.

Industry has taken steps to counteract that problem. AEA's board of directors has set a goal for each of our member companies to invest 2 percent of R&D expenditures in engineering education. In fact, industry spending in support of science at universities has increased 400 percent in the past decade.

In summary, engineers create products that lead to jobs for non-engineers. Restricting our ability to hire engineers in the United States will lead to lower relative employment in the United States far exceeding the number of engineers being debated. The long-term solution must come by increasing the supply of U.S. citizen engineering graduates, not by restricting immigrants. This cannot happen unless U.S. universities get significantly more resources for their engineering departments. AEA and its individual members have an active program to support our universities to the tune of tens of millions of dollars annually. Congress can be most helpful by directing its efforts toward support of this and other similar programs prior to any plans to close the safety valve of legal immigration.

Thank you.

Mr. MAZZOLI. Thank you very much, Mr. Calhoun.

[The complete statement follows:]

## American Electronics Association



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Statement of John Calhoun  
for the American Electronics Association  
Before the  
Subcommittee on Immigration, Refugees, and International Law  
Committee on the Judiciary  
United States House of Representatives  
March 10, 1983

- Restrictions on foreign graduates needed as faculty or as industry engineers jeopardize U.S. high tech companies' ability to grow and compete economically and militarily.
- Shortages of U.S. electrical/electronic and computer engineers are caused by high rates of company growth and an inability of universities to increase U.S. graduates due to a lack of faculty.
- Industry is actively engaged in programs to increase the supply of technically trained U.S. citizens, but it cannot do it alone nor overnight.
- Tightening legal immigration for foreign graduates will result in a net loss of jobs for U.S. citizens and in exporting technological brainpower to competing nations.

Statement of John Calhoun  
for the American Electronics Association  
Before the  
Subcommittee on Immigration, Refugees, and International Law  
Committee on the Judiciary  
United States House of Representatives

March 10, 1983

Mr. Chairman and Members of this Distinguished Committee:

My name is John Calhoun. I am Director of Business Development at Intel Corporation in Santa Clara, California. I am appearing before you today on behalf of the American Electronics Association (AEA).

The American Electronics Association represents over 2,000 growing high technology companies in 43 states. The association's membership encompasses all segments of the U.S. electronics industries, including manufacturers and suppliers of computers and peripherals, telecommunications equipment, defense systems and products, instruments, semiconductors and other components, software, research, and office systems. A majority of AEA's member companies employ fewer than 500 employees. AEA's fundamental purpose is to provide a healthy business environment for our industry, including such characteristics as an adequate pool of qualified technical people.



## OUR CONCERNS

AEA is primarily concerned with one provision in H.R.-1510, which relates to legal immigration. This provision is section 212 regarding students. Our concerns with the Senate version of this bill are summarized in enclosure 1, "Problems Related to S.529." If the Senate version of the bill is passed, it will interfere significantly with industry's ability to solve the shortage of trained technical manpower. The bill will make it more difficult for U.S. industry to make use of the technical skills and knowledge of alien students who are trained in U.S. universities, and additionally will make it more difficult for U.S. industry to bring in trained technical talent from outside the U.S. when there is no one with the necessary training available in the U.S.

We are more amenable to the language in H.R.-1510 and want to commend this Committee for its consideration of our problems. We want to extend our special appreciation to Chairman Mazzoli for visiting us in California last fall and opening a dialogue with the electronics industry. However, we want to reiterate our concerns so that the final bill that is passed by Congress does not result in any tighter limits on student immigration than are already in the bill. We would also urge the committee to remove the six year time limit; the requirement that waivers be granted only to students applying for immigrant visas; and the requirement for students to leave the country, if only briefly, in order to change their status. These provisions, if kept, would add to the bureaucracy and in some cases provide

undue hardship with little benefit. (See enclosure 2, analysis of the bill by immigration attorney Allen Jackson.)

#### SUMMARY OF TESTIMONY

A shortage of electrical/electronic (EE) and computer (CE) engineers exists today that inhibits our industry's ability to grow and compete on the world market. We are currently dependent on our ability to hire immigrants, primarily students graduating from U.S. universities, in order to compensate partially for the total shortage. If this source of talent is removed from us before an adequate supply of trained U.S. citizens becomes available then there will be serious negative repercussions on our industry, our economy, and our national defense without any material offsetting benefits to the U.S. Engineers create products that lead to jobs for non-engineers. Restricting our ability to hire engineers in the U.S. will lead to lower relative employment in the U.S. far exceeding the number of engineers being debated. The long-term solution must come by increasing the supply of U.S. citizen engineering graduates, not by restricting immigrants. This cannot happen unless U.S. universities get significantly more resources for their engineering departments. AEA and its individual members have an active program to support our universities to the tune of tens of millions of dollars annually. AEA's program was initiated one year ago and has been growing rapidly. Congress can be most helpful by directing its efforts toward support of this and other programs prior to any plans to close the safety valve of legal immigration.

## THE PROBLEM

Electronics has become an intrinsic part of the American way of life--from the watches we wear, to the automobiles we drive, to a new generation of conventional weaponry and armaments which gives us that "critical technological edge" that helps maintain our national security and the balance of world power. As a result, the electronics industry experienced a phenomenal annual growth rate of 17% during the 1970s. By 1979, high technology companies accounted for 75% of the net increase in manufacturing jobs from 1955 to 1979. By 1981, information technology accounted for 46% of the GNP.

The Scientific Manpower Commission reports that science and engineering employment in the industrial sector increased 9% per year between 1979 and 1981, up from 8% during 1977-79 and from 7% during 1973-1977.

An October 1982 report by the Business-Higher Education Forum, a group of nearly 80 company and university top executives, indicates that the demand for new qualified engineers is expected to continue to increase substantially through 1990. This high demand appears to be driven by the following trends: the continuing development and rearmament of the U.S. defense establishment, the continuing need for more effective use of limited energy and material resources, the expanding direct-service roles of engineering consultants in both traditional and new fields, the continuing expansion of technologically-based governmental programs and activities, the increasing penetration of new technology into all industrial and service



activities, and a broad advance in the rigor and level of most engineering functions. Thus, this demand is generated by a diversity of trends and is not a single-dimension demand dependent on one objective and one consumer, as has been the case in the past.

In fact, the Bureau of Labor Statistics projects that U.S. employment of electrical engineers will grow from nearly 300,000 in 1978 to about 450,000 by 1990. Ironically, the very success of the electronics industry has created one of our most serious problems: a need for technical people that outpaces the supply.

Despite the growing demand, the number of new engineers produced by U.S. universities has not kept pace. A flurry of applicants to engineering schools in recent years has resulted in entrance standards being raised to the point where sometimes only straight A students are admitted. Following a brief period of admitting much larger student bodies, engineering schools have started to cap and even cut back on enrollments due to lack of faculty, equipment, and facilities.

Just last week, Dr. George E. Pake, Xerox Research Center group vice president, was quoted in Electronic News: "The shortage of trained people bids up industrial salaries at a time when university resources have been seriously eroded by inflation. Our universities produce only about 200 computer science Ph.Ds annually--about the number just one major corporation recently stated it needs to hire each year."

Until universities get more resources, they will not be able to increase the supply of engineers significantly.

The competition for technical people that has resulted from the phenomenal growth of the industry has resulted in rapid salary increases for engineers. AEA's annual salary survey indicates that the average salary for non-supervisory degreed engineers was \$23,544 as of January 1982 for engineers one year out of school compared with \$14,136 five years earlier--an increase of 66%. This is 10% greater than the rate of inflation over the same period according to the Economic Report of the President, February 1983. The same report noted that median male employees' wages grew 6.5% less than inflation. Thus engineers' salaries grew 16.5% more than the median salary growth.

Another survey, by the College Placement Council, resulted in slightly different numbers, but the same conclusion. In their CPC Salary Survey: A Study of 1981-82 Beginning Offers, Formal Report No. 2 (Bethlehem, PA, March 1982), CPC reported beginning salaries for B.S.-degreed engineers in spring 1982 ranged from \$23,000 to over \$32,000. This survey also showed that B.S.-engineering candidates received about 60% of all job offers extended to baccalaureate candidates in the spring of 1982. This evidence of higher demand for engineers compared to other disciplines helps to validate the perspective that shortages in certain engineering fields exist.

Looked at from the international perspective, the U.S. clearly lags in the quantity of engineering graduates. For every one million population, the Soviet Union graduates 260 electrical engineers each year, Japan graduates 163, and the U.S. graduates 67. For every 10,000 population, 70 in the U.S. and 400 in Japan are engineers. According to the 1980 Presidential Report on Engineering and Science Education, the U.S. lags fourth in scientific literacy behind the Soviet Union, West Germany, and Japan. Engineering accounts for only 6% of the total undergraduate degrees awarded in the U.S., but 21% of those awarded in Japan, 35% of those awarded in the Soviet Union, and 37% of those awarded in West Germany.

This is occurring at a time when competition from abroad is increasing at a rate that is alarming. In the last few years for example, the Japanese have captured up to 70% of the U.S. market in one of the most important computer memory parts known as the 64K RAM. A few years ago their share of the dynamic RAM market in the U.S. was insignificant. The competition is weighted on the side of the countries with the technical human resources to develop new technologies and to produce quality products to meet market demand. Clearly, other countries are rapidly surpassing the U.S. in developing these human resources.

One can only reach the conclusion that Stephen Kahne, Director, Division of Electrical, Computer and Systems Engineering, National Science Foundation, did when he said in IEEE's Spectrum (June 1981, p. 50), "It is no longer an open question of whether the shortage of electrical engineers in the U.S.



is, or is not, a crisis. It is. Sooner or later every sector of the economy depending upon electrical engineering will be affected."

We in the industry have been forced to hire immigrants in order to grow (see enclosure 3). At Intel Corp., for example, foreign engineers make up 50% of the M.S. degree graduates and 66% of the Ph.D. graduates hired through the U.S. university system. At Measurex Corp., immigrants equal 33% of the R&D staff. At Rolm Corp., 20% of their new college hires with engineering degrees are non-U.S. citizens. Rolm typically hires 10-20% fewer engineers than they need and always has openings for experienced engineers which they are unable to fill because of the lack of qualified people.

In addition, the employment of recent immigrants has been critical to the success of our businesses. For example, Intel Corp.'s most notable inventors include engineers from Italy, Japan, France, Israel, and Hong Kong. Even Intel's president is an immigrant to the U.S.

Just six days ago, on March 4, in a speech before the Commonwealth Club in San Francisco, President Reagan praised Daisy Systems Corporation as a company "with the burning commitment we need to make our country great." Mr. Aryeh Finegold, founder and president of Daisy Systems, which now provides work for approximately 150 other workers (100 more than one year ago) entered the U.S. on an H-1 visa in 1979 to work for Intel. Had the immigration restrictions under consideration now been in effect at that time, Mr. Finegold would probably not have been admitted to the U.S. at all.

The problem is absolutely one of a shortage and not one of lower-cost labor. The Electronic Engineering Times Salary Survey (April 26, 1982) reports that foreign-born EEs' salaries tend to cluster slightly more around both the low and the high ends of the salary scale. The competition for engineers is such that the system doesn't allow for cheap hires. There is adequate evidence that engineers' salaries have not been depressed by the hiring of foreign engineers. (See enclosure 4.) Silicon Valley is well known for the high turnover between firms competing for engineering talent. Residents of Silicon Valley are bombarded by billboards, radio, and TV ads of companies seeking engineers for employment, even in the depth of the recession. Both defense and non defense companies offer bounties of \$500 to \$2,000 to employees who recruit a new engineer for the firm.

The shortage is so severe that Intel has already opened design facilities in Israel, France, and Japan simply due to the availability of highly skilled technical talent. Experience has shown that costs of operating an R&D facility in these developed countries are no lower than for operating a similar facility in the U.S., but these other countries do have a better supply of engineers. Other companies that have established research and development centers in Israel due to the availability of technical talent include AVX Corp., Control Data, Motorola, and National Semiconductor.

## CONSEQUENCES OF FURTHER RESTRICTING THE HIRING OF IMMIGRANT ENGINEERS

Enclosure 5 to this testimony is a memo from Mr. Eric Brooker, Vice President of Engineering at Andrew Corporation in Illinois. Mr. Brooker, an emigre from Australia, describes a rule applied in Australia for two decades following World War II which was similar to that proposed in section 212 of H.R. 1510. It required foreign students trained in Australian universities to return home for at least two years after graduation, as does section 212. This not only deprived Australia of individuals who could have made excellent contributions to Australian technology but also resulted in considerable ill-will directed at Australia. In addition, and more importantly, the best of these graduates did not return to their home countries but rather took positions in other technology-rich countries where opportunities were greater and where they were in direct competition with Australia. If the U.S. is concerned about exporting technology to our competitors, we must consider the realities of forcing U.S.-trained persons to leave this country.

The first consequence will be the exportation of non-engineering jobs out of the U.S. via one of two routes. Either U.S. firms will accelerate the relocation of facilities overseas, where the engineers are, in order to develop and produce competitive technical products or they will simply lose ground competitively to foreign firms. In either case, U.S. employment will suffer to a much larger extent than the number of engineers in question. At Intel, there are five non-technical jobs for every engineer employed. In the economy as a whole, 27 jobs depend on each engineer. The growth in employment that everyone is hopeful will come from high-tech to compensate



for cutbacks in "smokestack" America will be "cut off at the knees" if engineering talent is unnecessarily restricted. Engineers create jobs for other Americans rather than taking them away.

Small companies may suffer even more from the lack of technical manpower. Small new companies are at a disadvantage compared to large ones in providing attractive benefits to attract top engineers, and they do not have the capability to conduct extensive in-house training programs. Yet they create new jobs much faster than mature companies. A 1977 AEA survey indicated that although mature companies had an average of 27 times more employees than young companies, those young companies created an average of 89 new jobs per company versus an average of only 69 new jobs per mature company during the preceeding year.

Those individual engineers who would favor tighter legal immigration controls are likely not considering the impact on U.S. citizens who will benefit from job growth that comes when companies have the technical talent to grow and expand.

The second consequence of tighter legislation is that it could negatively impact productivity. Enclosure 6 shows the relationship between the percentage of engineers produced (and presumably retained) by a nation and the growth of productivity experienced by the nation. There is a clear direct relationship between percent of engineers and percent rise in productivity. Expelling foreign engineering graduates from the U.S. lowers

the number available for employment, thus likely having some adverse effect on U.S. productivity.

The third negative outcome may be a weaker defense capability. In addition to the overall loss of competitive economic strength versus other nations, U.S. defense programs, lacking needed technical talent to design, produce, and service defense arms and weaponry may be delayed and become more expensive.

Air Force Systems Command in November 1981 included about 12,000 scientists and engineers. According to General Robert T. Marsh, Commander, Air Force Systems Command, it was operating with about 700 fewer engineers than authorized. He was quoted in the October 26, 1981, Electronic News as saying that the Air Force was short 1100 engineers to meet minimum needs.

While the armed forces and the defense industry do not typically hire non-U.S. citizens, increased competition for a smaller pool of engineers will be reflected in the defense area. In addition, the Department of Defense is increasingly concerned about the export of technology. What better way to aggravate the problem than forcing engineers trained in leading edge technologies to leave the U.S.

The fourth problem will be a further roadblock in our universities' efforts to hire professors in the engineering schools to increase U.S. citizen graduates. In fact, without the supply of well-qualified and highly motivated foreign students and teachers, few engineering colleges could have

sustained their research programs and faculty commitments over the past several years.

Dr. Ken Haughton, Dean of Engineering at the University of Santa Clara in the Silicon Valley, notes that in a recent attempt to fill an electrical engineering professorship position, 21 of the 24 applicants were foreign. "Foreign people are a large fraction of engineering faculty in this country. I'd like to have U.S. citizens, but since I can't get them I rely on foreign faculty," says Haughton.

What tighter immigration restrictions will not do is increase the number of U.S. engineers. In fact, it is even unlikely that the kinds of immigrant engineers needed in the U.S. will return to underdeveloped countries. As Mr. Brooker pointed out, Australia's experience was that they went to other developed countries. Frank Williams of Hewlett-Packard Company stated it another way when he said, "If this bill (S.529) passes unamended, the net effect is we'll be training engineers for our foreign competitors. I don't think that's really the intent of Congress. We already have a difficult time getting well-qualified, state-of-the-art engineers regardless of nationality. If we can't hire foreign graduates, I'm sure our foreign competitors will be delighted to hire them."

#### CAUSES OF THE SHORTAGE OF ENGINEERS

The problem lies not in a lack of interested students but in a lack of faculty members to teach them. Nationally there are an estimated 1,600 to

2,000 engineering faculty vacancies, over half of which have been unfilled for more than one year. This represents about 10% of the total authorized engineering faculty positions. The vacancy rate approaches 50% in some fields such as solid state electronics, computer engineering, and digital systems.

Unfortunately, the trend is in the wrong direction. While the number of B.S. engineering degrees (i.e., the workload for professors) increased almost 50% over the past decade and the undergraduate enrollment doubled (according to Engineering Research Council data), Ph.Ds granted in engineering (the source of new faculty) decreased by nearly 25%. And increasingly more of these Ph.Ds have been granted to foreign students due to a lack of U.S. citizen interest in continuing on for a Ph.D. In electrical engineering B.S. degrees increased 14% between 1970 and 1980, while the number of M.S. degrees granted declined 10% and the number of Ph.Ds declined 40%.

A survey conducted during 1982 by the American Association of Engineering Societies found that the average salary (not starting salary) for engineering assistant professors as of September 1981 was \$24,100. Compare this with the average salaries at that time for new B.S. engineers in industry, which ranged from \$22,473 for new civil engineers to \$30,432 starting salary offers for petroleum engineers. Consider that obtaining a Ph.D. degree to go into teaching requires at least four more years of study, at a cost of up to \$20,000 per year for living costs and tuition at a



private school. It is then understandable that little incentive exists for U.S. citizens to obtain a Ph.D. to teach. As a result of this lack of interest, graduate engineering programs have filled empty slots with interested foreign engineering students, to the point that about one-half of the Ph.Ds awarded in electrical engineering last year went to foreign students. The increases in foreign student enrollments at the graduate level have not caused U.S. graduate students to be displaced or denied admission. The problem is that too few U.S. nationals choose to continue study at the doctoral level.

Engineers who do go on to get a doctorate are then faced with the choice of taking a teaching job at about \$24,000 per year (often less) or taking a job in industry at about \$33,500 to \$35,000, the average starting salary for Ph.Ds. As a result, fewer of the declining number of Ph.Ds are choosing to teach. For example, ten years ago an estimated 50% of new Stanford engineering Ph.D. graduates chose to teach, but last year only 24% did so.

As stated by James Botkin, Dan Dimancescu, and Ray Stata in "High Technology, Higher Education, and High Anxiety" (Technology Review, October 1982):

Market forces are polarizing salaries to such an extent that the option to become a professor is now looking more and more like a financial chastity vow. And the fewer faculty there are, the more onerous is the workload for those that remain. Since student-to-faculty ratios are increasing, the average engineering faculty member has a teaching burden 40% greater than ten years ago.

These same authors point out that the cost of filling 1,600 vacant faculty positions at an average salary of \$25,000 and giving the entire national engineering faculty a 30% raise to make academic salaries more competitive with industry would total about the same amount (\$190 million) as six and one-half hours of expenditures by the Department of Defense.

But salaries are not the sole culprit in luring engineers from teaching jobs to industry. As referred to above, the increased teaching burdens resulting from the faculty shortage have made teaching a less attractive career, as has the lack of up-to-date equipment and facilities. Inadequate and outdated laboratory equipment and facilities make it impossible to prepare students for state-of-the-art technology. Latest estimates to modernize U.S. engineering colleges range from \$500 million to over \$1 billion. The inability to provide sufficient equipment for undergraduate laboratories limits the number of students that may be served, and the increasing obsolescence of the existing equipment detracts from the quality of the education provided.

As a result of these problems, the quality of engineering education is deteriorating. The Accreditation Board of Engineering and Technology (ABET) reports that from 1980 to 1981, 31% fewer engineering programs received the full 6-year accreditation, and 71% more were noted as "needing improvement." Engineering college enrollments have doubled in ten years without a corresponding increase in either faculty or equipment. This has resulted in a cutback of course offerings by 54% of U.S. engineering institutions. The

increase in undergraduate students has strained the capacity of university resources. Faculty shortages have forced more than 20 major universities to cap or cut back engineering enrollments.

The National Engineering Action Conference (NEAC), a joint conference of education, industry, government, and the engineering profession held in 1982, summarized the present status of engineering education as follows:

The state of engineering education in the United States is deteriorating severely.

...with undergraduate engineering enrollments at all-time highs, at least 1,600 engineering faculty positions stand empty. Further, only a fraction of the candidates necessary to fill such positions are actually pursuing advanced degrees; an even smaller fraction are choosing academic careers. If not addressed, the faculty shortage will inevitably bring a sharp deterioration in the quality of engineering education, with serious consequences for the nation's key industries and defense in a competitive, dangerous world.

We urge that all concerned focus their efforts on these two chief objectives:

1. To fill, with qualified personnel, the engineering faculty vacancies, and
2. To make engineering faculty careers more attractive by enhancing the academic environment.

#### WHAT INDUSTRY IS DOING

In recognition of this problem, industry has taken steps to begin to counteract it. AEA's Board of Directors has set a goal for each of our member companies to invest 2% of R&D expenditures in engineering education in cash or cash equivalents. AEA has established the Electronics Education

Foundation to encourage and aid contributions to engineering education by our member companies. The Foundation's goal is to raise 300 faculty development grants of approximately \$10,000 each to help universities recruit and retain faculty, and 200 graduate student grants at an average of \$15,000 per year for four years per grant to U.S. citizens who plan to pursue a teaching career in electrical, electronic, or computer engineering. In addition, member companies are encouraged to donate state-of-the-art equipment to engineering schools, which simply do not have the funds to keep their equipment up to date. Enclosures 7 through 10 further describe the Foundation program, and enclosure 11 outlines an AEA publication describing numerous joint industry-university programs for the purpose of encouraging replication.

Hewlett-Packard Co. is vanguarding AEA's Faculty Development Program by committing funds for 50 graduate fellowship-loans for U.S. citizens over the next eight years at a cost of \$6 million. Control Data in cooperation with AEA's Foundation recently announced a \$6 million contribution of microcomputers and lower division engineering courseware to some 100 engineering colleges and universities.

AEA has also organized committees composed of industry executives around the country to develop action plans to address the problem on a regional or state basis, raising \$10 million dollars for 1983.



The National Science Foundation estimates that industry spending on universities has increased almost fourfold during the past decade, with an estimated \$275 million going to academic laboratories in 1982. Enclosure 12 describes the efforts of some companies and organizations to assist U.S. universities. A few examples include:

- o In 1982 Intel donated \$9.4 million worth of products, equipment, services, or cash to universities;

- o In 1982 IBM funded more than 90 fellowships in engineering, computer science, and information systems, and awarded over \$750,000 in grants to departments of engineering and computer science, and it has announced it will donate \$50 million to the five schools that come up with the best proposals for manufacturing engineering programs;

- o General Electric Co. has increased to \$10 million the money it gives annually to higher education;

- o American Telephone & Telegraph Co. will award 25 four-year fellowships each year to promising science students, for an annual cost of \$2 million;

- o Hughes Aircraft Co. provides about \$8 million a year support to colleges and universities through various programs;

- o Loral Corp. has contributed \$165,000 for a microwave laboratory at City College of New York;

- o Motorola has given \$1.2 million to Arizona State's College of Engineering and Applied Sciences to support its Center of Engineering Excellence;

- o Analog Devices, Inc. has contributed \$175,000 to Massachusetts' University of Lowell to fund a new engineering professorship;

- o 3M Co. has given \$1.2 million to two research centers at the University of Minnesota's Institute of Technology;

- o National Semiconductor has donated equipment valued at \$376,000 to Rochester Institute of Technology for its micro-electronics program, in addition to its regular assistance to 12 other engineering schools nationally.

#### SOME MISCONCEPTIONS

One of the most common arguments to counter predicted "shortfalls" of engineers is the argument that engineering employment is cyclical. To some extent, of course, this is true of any type of employment. Witness, for example the downward trend in all areas of employment that accompanies an economic downturn such as our recent one. Nevertheless, patterns of engineering employment are relatively stable, fluctuating only moderately in response to shifts in economic, social, and demographic conditions.

Between 1963 and 1979, for example, the unemployment rate for engineers varied between a low of .7% from 1966-68 and a high of 2.9% in 1971. In only four of the years was the rate over 2%. Yet during this same time period, the unemployment rate for all professional groups varied from 2% to 6%. Clearly, engineering is no more "cyclical" and actually less so than other types of employment. In fact, as pointed out by Daniel C. Drucker, president of the American Society for Engineering Education, "Engineering is just about the only profession or occupation other than medicine in which every graduate who wishes to be employed as a member of the profession can obtain a position, unless the economy is in terrible shape."

A 1981 AEA survey showed a shortfall between supply and demand of some 20,000 electrical/electronic and computer engineers annually through 1985. The state of the current economy has lessened the demand only slightly. The supply has also been limited due to many engineering colleges capping or cutting back enrollments due to too few faculty. It needs to be kept in mind that as the economy starts to improve, the demand for EE/CS engineers will far outpass the supply. Although engineering students account for only 6-to-7% of U.S. graduates, they continue to receive about two-thirds of all job offers from business and industry.

Les Hogan, Director of Fairchild Corporation, points out the importance of our need for human resources--the brainpower that drives the electronics industry:

"Though there are many important issues worth our collective effort...as I look at the next ten years, I worry about international competition. If we lose the battle in the marketplace, we will lose because we do not have the quantity of trained people necessary to keep leadership in the industry. This is the single most important issue our industry faces--bar none! Other things will slow us down and make it tougher, but we can still win. The lack of qualified technical people, however, means we cannot win."

The drive to limit legal immigration in areas where shortages of U.S. workers exist will only exacerbate a problem that industry, education, and state and federal government are all working to remedy. However, effective solutions require time. New professors cannot be trained, university salaries cannot be made competitive, and colleges without professors cannot graduate the necessary number of engineers overnight.

AEA's position has been endorsed by the Reagan Administration, the Alliance for Immigration Reform, the Business Roundtable, the National Association of Manufacturers, the Semiconductor Industry Association, the American Council on Education, the Association of American Universities, and many other educational associations.



## ENCLOSURES:

1. AEA fact sheet: "Problems Related to S.529."
2. Allen Jackson, "Memorandum re technical implications of S.529 on nonimmigrant employees," March 1, 1983.
3. "Firms Differ on Getting EEs From Abroad," Electronic News, April 20, 1981.
4. "Career outlook: Demand for EEs grows fastest," Electronics, June 2, 1982.
5. Letter to Representative Henry Hyde from C. Russell Cox, Chairman, Andrew Corporation, and internal Andrew Corp. memo to C. R. Cox from E. L. Brooker, September 1982.
6. "Relation of Productivity Growth to Percentage of Engineers," from "Science and Engineering Education for the 1980s and Beyond," NSF and Department of Education, October 1980, p. 140.
7. Brochure, Electronics Education Foundation.
8. "American Electronics Association: Engineering Education Program"
9. "AEA Regional Electronics Education Committees"
10. "Electronics Education Foundation: Goals and 1983 Program"
11. AEA Guidebook: "Model University-Industry Engineering Programs," April 1982 (Introduction and Table of Contents).
12. AAES/ASEE Project on Engineering College Faculty Shortage, "Catalog of Programs in Industry, Academe, and Selected Institutions to Aid Graduate Engineering Education," Issue No. 2, August 1, 1982.

(Appendix is maintained  
in Cte files)

Mr. MAZZOLI. Dr. Gray, the President of MIT, but also here on behalf of the American Association of Universities.

Mr. GRAY. Thank you. I am pleased to present the views of the higher education and my own institution on the Immigration Reform and Control Act.

International students, research staff and faculty are an integral part of the American university. The Immigration Reform and Control Act, as presently constituted, could have an adverse impact on the quality of education and research in the United States by making it more difficult for highly educated scientists, engineers and scholars to remain temporarily or permanently as teachers or researchers. We would be deprived of an invaluable source of talented people who have much to offer the United States.

Our universities must have access to the best faculty. This bill, if unamended, would limit that access. Our case rests on the national interest in the quality of scholarship, teaching and research in America's greatest universities.

Since World War II, university faculty in science and engineering have led the world in the quality of their research. Their discoveries enable American companies to develop technologies and products that compete effectively in world markets. We can be equally proud of the quality of our scholarship in the arts and letters and other disciplines.

A significant fraction of these teachers and researchers are foreign born. At MIT, for example, that fraction is about 15 percent. We need to leave the immigration door open enough to allow those who have the potential to benefit our Nation to come or to stay at our U.S. universities.

Academic search committees have one goal in common, whatever institution they represent—to find the best qualified scholars to teach their student and conduct research. We are concerned with attracting the most able staff possible, those with the potential for greatness as well as those who are already celebrated. Nationality is not and should not be an issue.

Last year, the Senate version of the bill deleted from existing law the provision that requires the Secretary of Labor to determine that "equally qualified" American workers are available for a faculty position before he can deny labor certification to a member of the teaching profession. The House, I am happy to say, retained this important provision and added an amendment (proposed by Congressman Frank) to expand its coverage to include college and university researchers with doctoral degrees as well. I support fully the House version and I hope that the final language of the bill will contain this additional provision.

It is important to America's economy and security that U.S. colleges and universities be able to choose the best qualified people for teaching and research positions. Minimum standards will only weaken higher education and research in the United States. I commend the chairman, Representative Frank, and the members of the subcommittee for recognizing that important truth.

I am concerned about the proposed requirement that F-1 students return home for 2 years. Many students, particularly in the sciences, spend a year or two doing postdoctoral research after completing a degree. This additional training is important to their

future careers in their home countries and to the advancement of science. Former foreign students also help fill junior faculty positions at colleges and universities. The actual number who remain in the United States is small, but the impact is great. Those who stay tend often to be in critical fields—such as engineering, for example—where we have had a decline in the number of U.S. citizens enrolled as graduate students so that the applicant pool for junior university teaching and research positions has become increasingly, on a relative basis, foreign.

It is true that a committee amendment grants universities waivers for students who have been offered faculty appointments in mathematics, science, and engineering. Unfortunately, the committee added another amendment that sunsets these waivers in 1989. We are grateful for the waivers, Mr. Chairman, but I do not think they should be limited to high technology disciplines nor should they expire in 1989.

Our institutions seek to excel in all academic disciplines, the liberal arts as well as the sciences. We cannot be great in science and engineering if we are less than great in other scholarly fields. When this bill passes, I hope that waivers will be available to all faculty and research candidates, irrespective of their academic disciplines.

Since a residence requirement inhibits changing to another non-immigrant visa as well as to an immigrant visa, the limit of 1,500 waivers allocated to educational institutions contained in the Senate bill is inadequate. If the residence requirement must be retained, the quotas should be eliminated. If a graduate can prove by successful completion of the labor certification process that his or her skills are needed—and no equally qualified American can be found to fill that need—then the graduate should not be barred from a position by any arbitrary numerical limit.

The sunset provision on waivers for students with university job offers is also inappropriate. We will always be looking for the best qualified talent. Our national need for excellence will not end in 1989.

The free exchange of ideas, and of scholars, has helped make this country the world leader in science and, more broadly, in education. Mobility of scholars who come to the United States to study for undergraduate and graduate degrees, conduct advanced research, or teach is essential to the continuation of that leadership. I know this subcommittee, and I hope the Congress, will consider that in revising the law which determines who goes and who stays.

On behalf of my colleagues in higher education, I appreciate the opportunity you have given me to testify on this important legislation. I am prepared, of course, to try to answer any questions you may have.

Mr. MAZZOLI. Thank you very much, Dr. Gray. We appreciate that statement.

[The complete statement follows:]

American Council on Education

Association of American Universities

One Dupont Circle, N.W., Washington, D.C. 20036

Testimony  
for the

House Subcommittee on Immigration, Refugees and International Law

on H.R. 1510

The Immigration Reform and Control Act of 1983

March 10, 1983

Paul E. Gray  
President  
Massachusetts Institute  
of Technology



## ORAL TESTIMONY

Mr. Chairman, members of the Subcommittee, I am Paul E. Gray, President of the Massachusetts Institute of Technology. I am pleased to present the views of higher education and my own institution on the Immigration Reform and Control Act (H.R. 1510). I am here on behalf of the American Council on Education (ACE), which represents nearly all United States colleges and universities, and the Association of American Universities (the AAU), which represents America's research universities. My testimony is based on material and data prepared by the AAU.

International students, research staff and faculty are an integral part of the American university. The Immigration Reform and Control Act, as presently constituted, could have an adverse impact on the quality of education and research in the United States by making it more difficult for highly educated scientists, engineers and scholars to remain temporarily or permanently as teachers or researchers. We would be deprived of an invaluable source of talented people who have much to offer the United States.

Our universities must have access to the best faculty in all academic disciplines and from all sources. This bill, if unamended, would limit that access. Our case rests on the national interest in the quality of scholarship, teaching and research in America's greatest universities.

Since World War II, university faculty in science and engineering have led the world in the quality of their research. Their discoveries enable American companies to develop technologies and products that compete effectively in world markets. We can be equally proud of the quality of our scholarship in the arts

and letters and other disciplines.

A significant fraction of these teachers and researchers are foreign born. At MIT, for example, that fraction is about 15 percent. Seventy-seven of MIT's faculty are members of the prestigious National Academy of Sciences, and twenty-three of them are foreign born. We need to leave the immigration door open enough to allow those who have the potential to benefit our nation to come or to stay at our U.S. universities.

Academic search committees have one goal in common, whatever institution they represent--to find the best qualified scholars to teach their students and conduct research. We are concerned with attracting the most able staff possible, those with the potential for greatness as well as those who are already celebrated. Nationality is not and should not be an issue.

Last year, the Senate version of the bill deleted from existing law the provision that requires the Secretary of Labor to determine that "equally qualified" American workers are available for a faculty position before he can deny labor certification to a member of the teaching profession. The House, I am happy to say, retained this important provision and added an amendment (proposed by Congressman Frank) to expand its coverage to include college and university researchers with doctoral degrees as well. I support fully the House version and I hope that the final language of the bill will contain this additional provision. It is important to America's economy and security that U.S. colleges and universities be able to choose the best qualified people for teaching and research positions. Minimum standards will only weaken higher education and research in the United States. I commend the Chairman, Representative Frank, and the members of the Subcommittee for recognizing that important truth.

I am concerned about the proposed requirement that F-1 students return home for two years. Many students, particularly in the sciences, spend a year or two doing postdoctoral research after completing a degree. This additional

training is important to their future careers in their home countries and to the advancement of science. Former foreign students also help fill junior faculty positions at colleges and universities. The actual number who remain in the United States is small but the impact is great. Those who stay tend often to be in critical fields--such as engineering, for example--where we have had a decline in the number of U.S. citizens enrolled as graduate students so that the applicant pool for junior university teaching and research positions has become increasingly, on a relative basis, foreign.

It is true that a Committee amendment grants universities waivers for students who have been offered faculty appointments in mathematics, science and engineering. Unfortunately, the Committee added another amendment that sunsets these waivers in 1989. We are grateful for the waivers, Mr. Chairman, but I do not think they should be limited to "high technology" disciplines nor should they expire in 1989.

Our institutions seek to excel in all academic disciplines, the liberal arts as well as the sciences. We cannot be great in science and engineering if we are less than great in other scholarly fields. When this bill passes, I hope that waivers will be available to all faculty and research candidates, irrespective of their academic disciplines.

Since a residence requirement inhibits changing to another non-immigrant visa as well as to an immigrant visa, the limit of 1500 waivers allocated to educational institutions contained in the Senate bill is inadequate. If the residence requirement must be retained, the quotas should be eliminated. If a graduate can prove by successful completion of the labor certification process that his or her skills are needed--and no equally qualified American can be found to fill that need--then the graduate should not be barred from a position by any arbitrary numerical limit.

The sunset provision on waivers for students with university job offers is also inappropriate. We will always be looking for the best qualified talent.

Our national need for excellence will not end in 1989.

The free exchange of ideas, and of scholars, has helped make this country the world leader in science and, more broadly, in education. Mobility of scholars who come to the United States to study for undergraduate and graduate degrees, conduct advanced research, or teach is essential to the continuation of that leadership. I know this Subcommittee, and I hope the Congress, will consider that in revising the law which determines who goes and who stays.

On behalf of my colleagues in higher education, I appreciate the opportunity you have given me to testify on this important legislation. I am prepared, of course, to try to answer any questions you may have.

Mr. MAZZOLI. Mr. Feerst.

Mr. FEERST. Yes, Mr. Chairman. I first note that I am a working engineer, and by that I guess it means I am perhaps one of the two people who has spoken today who will be docked a day's pay for having spoken to you here.

I note, of course, that Psalm XXIII is applicable in that there is a table for me in the presence of mine enemies, the academics and the corporate executives from the American electronics group here.

Mr. MAZZOLI. I wouldn't necessarily characterize them as enemies. You might have differences of opinion on this particular issue.

As far as docking the pay, if it is a couple bucks, you know, I might be able to—

Mr. FEERST. No. No. I am independently wealthy; my wife works.

I think some numbers about this foreign student problem are in order. We have 327,000 foreign students in this country right now. The biggest single piece of them is studying engineering, about 80,000—a little less than 80,000.

It is interesting that Father Hesburgh put his finger precisely on why the academics want them here. His market, Paul Gray's market is going down the tubes. We have closed all over this Nation grad schools, junior highs. It is the turn of the colleges next, and they are fighting this tooth and nail by insisting against all reasonable data that there is a shortage of engineers.

I have been an engineer for 33 years, and perhaps for 2 years before that I was in electronics, during and after World War II, in the Navy. There has never been a shortage of engineers in this Nation. So these 327,000 foreign students, no one of which pays the full costs, cost this Nation something in the order of \$1 billion a year. Because even at a private, high priced school like MIT the Government picks up a lot of the costs from NSF grants and what have you, dormitory grants.

At the State and city schools the differential is even greater. It is \$1 billion a year from my pocket, and I resent it. There is more than that. There is a second cost, a social cost. I was born very, very poor, and engineering was the way that I climbed out of the ghetto. Some people who don't like me say I am still there.



But if we have these foreign students who go to college here and stay here become an instant middle-class, and they inhibit the typically American process of upward social mobility on the part of the American poor.

There was a study made, for example, by a professor of sociology at Howard University here in the District of Columbia, John Reid. He made it clear that the new immigrants are taking jobs away from the blacks. Indeed, for all we hear, in 1982, according to the data I have, MIT—perhaps you know of a man who is president of that school—graduated a total of 32 blacks, but a total of 332 aliens. Data: The American Association of Engineering Societies, and I have their data here if you would like that. There is a problem—for whom do America's colleges exist?

The next thing is how do we, how do foreign graduates manage to remain in the United States, particularly in the engineering field? To exchange their student visa for the green card, the resident one, all they need is a job—any job. Salary is not at all important. On pages 9 and 10 of the data I sent you I have two horror sheets. Here is a job advertised, as you will note, by these various State employment offices. One in a trade newspaper, November 22, 1982: Ph. D. engineering, plus 1 year, \$19,000 a year. And dig this one in the magazine *Science*, on page 10—is that my time?

Mr. MAZZOLI. I am sorry. It really is. When you are having fun 5 minutes goes so fast.

Mr. FEERST. Mr. Chairman, they didn't have an easel for my charts, could I—

Mr. MAZZOLI. OK, 2 more minutes. You make me an offer I can't refuse.

Mr. FEERST. Ph. D. in microbiology, \$6.82 an hour.

OK, there is no shortage of engineers. There is a company called Intel which a few months ago put through—and you were not even told about that—a 10-percent wage cut, cut, for all of their engineering staff.

What kind of shortage are we talking about? There have been layoffs of hundreds and thousands of engineers even in the high tech region out on the west coast. There is no shortage of engineers and the real wages of engineers have been going down since 1969 in terms of real bucks, and I have a graph in the handout here.

Thank you very much.

Mr. MAZZOLI. Thank you very much. I appreciate your cooperation on the time. It is true that it is amazing how quickly 5 minutes will go.

[The complete statement of Mr. Feerst follows:]

COMMENTS PREPARED FOR  
UNITED STATES HOUSE OF REPRESENTATIVES  
HOUSE JUDICIARY COMMITTEE  
SUBCOMMITTEE ON IMMIGRATION

I -- Problems Caused by Foreign Engineering Students

II -- The Myth of the Engineering "Shortage"

III -- Recommendations

SUBMITTED BY:  
Irwin Feerst  
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10 March, 1983

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The Committee of Concerned E.E.s is an organization of about 3,000 American working electrical and electronics engineers. The word "working" is used to differentiate this group from the usual group of non-working engineers who address Congressional Committees - the academics and the corporate executives. This non-representative group clearly has vested interests in maintaining the large numbers of foreign students enrolled in American universities. The academics see this as a cure for their problems of empty classrooms. The corporate executives perceive the large supply of foreign engineering graduates, many of whom remain in this country to work for sub-standard wages, as a means to reduce, still further, the already low salaries paid to American engineers.

The sad fact is that, despite widely publicized press comment about a "shortage" of engineers, the salaries of American engineers have been going down (!!!) since 1969, when measured in terms of constnt dollars. How can this indicate a shortage?



## I -- Problems Caused by Foreign Engineering Students

## A -- SOME STATISTICS

According to Mr. E. Battle of the Institute of International Education (New York, NY - 212/883-8200), there are at present about 327,000 foreign students attending American colleges and universities. The largest single category of study is engineering, with more than 75,000 of these foreign students electing this major. This is about 23% of the total - by far the largest field of study!!

A breakdown of engineering degrees granted to foreign students attending American universities is given in the table on the next page. It is clear that there has been substantial and continuing growth in these figures and this should be cause for alarm. Especially upsetting is the very large percentage of Ph.D.s in engineering granted to foreign students. Doctoral studies are very expensive and represent a great financial drain on the universities and the taxpayers who ultimately pay for the education.

---

ENGINEERING DEGREES GRANTED TO FOREIGN STUDENTS  
(attending American universities)

	<u>1979</u>		<u>1980</u>		<u>1981</u>		<u>1982</u>	
	No.	%	No.	%	No.	%	No.	%
B.S.	3788	7.20	4855	8.35	5622	8.92	5410	8.08
M.S.	4066	25.4	4509	26.6	4677	26.1	5216	28.5
Ph.D.	929	33.0	982	35.7	1054	37.1	1167	40.4
	-----		-----		-----		-----	
TOTAL	8783		10346		11353		11793	

(Source: Mr. P. Sheridan, Engineering Manpower Commission,

212/705-7846)

B -- THE DOLLAR COST TO THE AMERICAN TAXPAYER

It is reasonable to estimate that the cost of a college education exceeds the tuition paid by about \$3,000 per student per year. In the public colleges it is more, and in private colleges, it is greater. (Even private colleges receive some public funds.)

Some simple arithmetic will help us determine the burden to the American taxpayer caused by the 327,000 foreign students. Since each costs the taxpayers about \$3,000 per student per year, the 327,000 foreign students cost the American taxpayers about ONE BILLION DOLLARS A YEAR!!!!

It is interesting to note a suggestion made to me by a former colleague of yours, Representative Gregory Carman of New York. He suggested that foreign students be required to pay the full cost (and not merely the full tuition) of their college education. This is the situation at the present time in Great Britain.

## C -- THE SOCIAL COST TO AMERICA'S POOR

The typical American social process is one whereby poor people "percolate" upwards to the middle class. This is especially true in engineering, which has traditionally provided this path for poor, but bright young people. But the presence of a large number of foreign engineering graduates who, after graduation, exchange their student visas for resident visas, inhibits this usual upwards mobility of America's poor classes.

It should not be thought that these foreign engineering graduates are the classical "huddled masses." The New York Times of March 1, 1983 (p. A21) characterized these people as "the educated and wealthy who can maneuver themselves or hire guides to take them through the bureaucratic jungle and into the United States." These foreign engineering graduates who elect to remain in this country then become an instant middle class and serve to perpetuate the ghettos in which America's poor live.

Can this nation afford to favor wealthy foreigners at the expense of our own seventh-generation poor?



## D -- THE COST TO AMERICAN LABOR

Foreign engineering students who, after graduation, remain in this country to work do so at a much lower wage than those commanded by their American colleagues. We have documented many such examples of this, and the blame for this situation must rest with the U.S. Department of Labor's Alien Certification Office. We have found Mr. Aaron Bodin, Ms. Dennis Gruskin (202/376-6982), and Ms. Maureen Cronin (202/376-6518) to be particularly insensitive to the desire of American working engineers to ensure that foreign engineers do not work for low wages.

There is an even more insidious result. We have documented cases in which foreign engineers have been kept on the job and American engineers fired simply because FOREIGN ENGINEERS WORK FOR LESS!!

The mechanism for hiring foreign graduates from American engineering colleges is simply for the employer to show that no American engineer could be found to fill the opening. This is done with the connivance of the State Employment office by the simple expedient of advertising the position at a salary so low that no American can be found. On the following pages, we have reproduced several such advertisements, together with some editorial comments that have appeared in the press.

**RESEARCH  
ELECTRICAL ENGINEER**  
for laser kinetics lab. Apply quantum electronics and molecular chemistry and physics and instrumentation engineering. Experienced on high power lasers. Laser research, electrical instruments, digital detecting circuits, mass spectrometers, computer interfacing. PhD in chemistry or engineering. 1 yr experience. Salary \$19,000/yr. L.A. area. Send this ad and your resume to Job #8735, P.O. Box 885, Sacramento, CA 95804 no later than Dec 5, 1982.

Ph.D. +  
1YR EXP  
\$19,000/YR

Electronic News November 22, 1982  
page 66

## Foreigners at GE survive layoffs

By MICHAEL FUCHS  
Staff Writer

The recruitment and hiring of about 15 foreign engineers by Lynchburg's General Electric plant angered many American GE employees after layoffs at the plant were announced last week and has left the foreign workers in an awkward situation.

Questions have also been raised as to whether the foreign employees will be allowed to continue working at GE.

None of the 15, all of whom came to the plant within the past 10 months, were part of the 169 workers that GE announced it had laid off. At least half of the workers came from England.

Furthermore, GE officials said the workers, all of whom have only temporary visas, are permanent employees, and that GE is working toward getting them permanent status with the Immigration and Naturalization Service.

Many of the American workers laid off last week have been with the company for as long as 15 to 20 years.

LYNCHBURG (VA.) News and Daily Advance  
22 March, 1981, page A1

ENGINEERING JOBS:

RESERVED  
FOR  
ALIENS

### Recruitment

#### SENIOR SCIENTIST

A major division of a Fortune 500 Company offers an outstanding opportunity for personal growth and advancement to a career-oriented professional.

We are currently seeking a Sr. Scientist with a MS in Chemical Engineering and a knowledge of aerosol dynamics, fluid mechanics, heat transfer, nucleation thermodynamics, reaction kinetics and process control. The individual will originate technical programs pertaining to mathematical modeling of fluid dynamic situations related to fiber optic preform fabrication, theoretical analysis of deposition character of fine particles, analysis of reaction kinetics of particle formation, aerosol dynamics and thermodynamic analysis of nucleation and particle growth in order to improve the process of manufacturing optical glass fibers for telecommunications. Prepare technical reports when programs are completed.

We offer an excellent starting salary of \$26,000 per year, comprehensive benefits and generous relocation assistance.

Please forward detailed resume, including salary history, in utmost confidence to: Virginia Employment Commission, P.O. Box 61, Roanoke, Virginia, 24002.

Equal Opportunity Employer M/F/H/V

PHOTONICS SPECTRA 87

FEBRUARY 1983

#### HARDWARE EVALUATION

##### ENGINEER

Responsible for the quality of INTEL system products through the review and test of system designs for compliance to specifications. Duties consist of reviewing engineering and product documentation, performing worst case design analysis, developing evaluation plans, generating hardware test suites and functional and environmental testing of INTEL system products. Research or project background in digital systems. Familiar with digital laboratory equipment. Microprocessor based design experience. High-level and low-level programming languages experience. Digital switching theory and circuits background. MSEE + 1 year exper. \$24K/mo. Send resume with copy of this ad to: Dept. J P.O. Box 7282 Phx. AZ 85011

ELECTRONIC NEWS, MONDAY, FEBRUARY 21, 1983 93

MASTERS + 1YR EXP : \$28,428/YR

## RESEARCHER

Will investigate the regulation of protein synthesis in dormant and developing embryos. Will also participate in other projects dealing with the regulation of growth of normal and neoplastic cells. The specific skills required are: protein purification techniques, anti-sera production and radioimmunoassays; the use of high-speed centrifuges, spectrophotometers, and scintillation counters; growth of cells in tissue culture. Must have Ph.D. in microbiology. Also must have knowledge in growing microorganisms and operating small fermentors. Forty hours per week at \$6.82 per hour. Please contact: Mississippi State Employment Service, 502 Yazoo Street, Jackson, Miss. 39205. An Equal Opportunity Employer Job Order Number 1121401

Ph.D. for  
\$6.82 per hour!!!

SCIENCE - 3 December, 1982

## SOFTWARE ENGINEER

Master's in Computer Science and one year experience as Software Engineer or Data Analyst or Real Time Program Analyst. Develop software utilizing mini-computer. Assemble language interface with project teams in all phases and when required, perform project leader functions. Must know COBOL, DEC, IBM, BUNKER RAMO and programming Assembly language. 40 hours per week. \$443.00 per week. Job in THUMBULL, CONNECTICUT. Send resume to Mr. Dan Romanelli, Bunker Ramo Information Systems, Trumbull Industrial Park, Trumbull, CONN 06609. Bunker Ramo Information Systems is an operating unit of Allied Corporation. An equal opportunity employer m/f

## ELECTRONIC ENGINEERING

A position is open for an Electronic Engineer to establish a test technique for evaluating the effect of variation in ion implantation parameters in device performance. Substrates and/or epitaxial layers grown in-house will be implanted in-house and simple devices will be fabricated (candidates should have a Ph.D. in Electronic Engineering with experience in semiconductor device fabrication and microwave measurement techniques). Salary-\$25,000.00 per year. Applicants should respond to Ohio Bureau of Employment Services, 222 Salem Avenue, P.O. Box 1822, Dayton, Ohio 45401. Reference O/586415

ELECTRONIC NEWS, MONDAY, SEPTEMBER 6, 1982 75

MASTERS DEGREE + 1 YR. EXP :  
\$23,036/YR

PHYSICS TODAY  
February, 1983, p. 120

Ph.D. + EXPERIENCE :  
\$25,000/YR.

HELP WANTED :  
RESERVED FOR ALIENS

E -- U.S. DEPARTMENT OF STATE

A large measure of the blame for this situation rests with the U.S. Department of State and its student visa program. This program is administered by one Mr. Richard Scully.

Student visas are issued by American consultates in foreign countries. They are usually quite easy for a prospective foreign student with a well-connected family to obtain. However, a fundamental requirement for the issuance of these student visas is that job openings exist in the student's native countries for the skills that he/she will acquire as a result of studying in the United States!!

Unhappily, this requirement is seldomly fulfilled. In the case of a prospective electronics engineer from Pakistan, for example, the American consulate is supposed to first determine the number of job openings in Pakistan for electronics engineers. IF THERE ARE FEW JOB OPENINGS FOR ELECTRONICS ENGINEERS IN PAKISTAN, THEN THE AMERICAN CONSULATES IN THAT COUNTRY ARE NOT SUPPOSED TO ISSUE STUDENT VISAS FOR THAT DISCIPLINE!!!!!!

This requirement is not followed and the result is that the U.S. Department of State, and Mr. Richard Scully have permitted wholesale student migration into the United States.

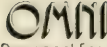


## F -- U.S. IMMIGRATION AND NATURALIZATION SERVICE

The direct importation of foreign engineers falls within the purview of the U.S. Immigration and Naturalization Service. It is possible to import, directly, foreign engineering and scientific personnel by claiming that they are "persons of exceptional merit in the sciences". Indeed, it was under this provision that Enrico Fermi and Albert Einstein were admitted into the United States. We Americans can be grateful for these events.

But recently, INS has determined that engineering and scientific personnel possessing a mere Bachelors degree fall under this category! THE RESULT HAS BEEN TO ADMIT HORDES OF POORLY TRAINED ENGINEERS AND SCIENTISTS WHO WORK FOR SALARIES A FRACTION OF THOSE COMMANDED BY THEIR AMERICAN COUNTERPARTS.

Some unscrupulous businessmen have even advertised the availability of foreign engineers. Their solicitations clearly state the advantage to employers of hiring imported engineers and scientists: "To top it all, hiring of Filipino technical workers is more advantageous because it means an increase in profit due to the sizable reduction in their wages." We have included one such solicitation.



OMNI Personnel Services Inc.

Suite 212  
4330 Stevens Creek Blvd  
San Jose, California 95129

554 1644  
Phone (408) 299-5544  
Telex 171 647  
TWX 910 330-7067

2 September 1981

Dear Sir:

We would like to introduce OMNI Personnel Services, Inc., which represents the Philippine contract workers in Canada, Great Britain, Italy, Saudi Arabia and other Mid-Eastern countries.

The Philippine labor market has been very attractive to companies in foreign countries worldwide because Filipinos are known not only for their hard work and technical abilities, but also for their command of the English language. To top it all, hiring of Filipino technical workers is more advantageous because it means an increase in profit for your company due to the sizable reduction in their wages.

We would like to explore with you the possibility of securing H-1 visas issued by the U. S. Immigration Services for contract workers in the United States. We would also like to discuss with you placement in foreign countries in which your company might have manpower requirements.

If you think OMNI can solve your manpower requirements, please do not hesitate to write or call us, and we would be more than glad to discuss the matter in further detail, personally.

With anticipation that this letter will merit your valued interest, I remain,

Sincerely,

RODRIGO P. ALAURA  
Director - Contract Workers

RPA/ksb

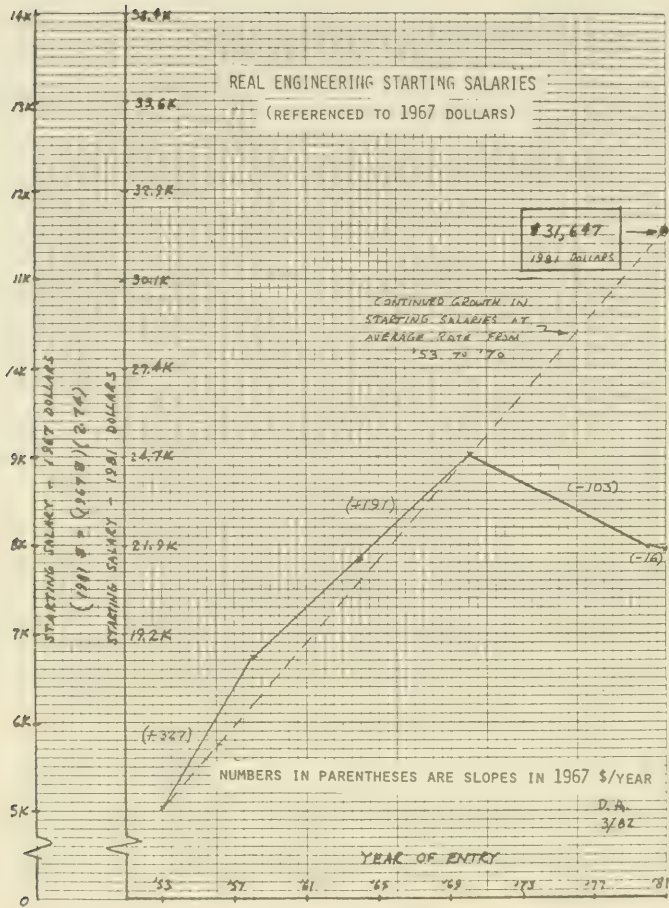
## II -- The Myth of the Engineering "Shortage"

### A -- SOME OBVIOUS POINTS

When there is a genuine shortage of wheat, or tungsten, or Cadillacs, the real dollar cost of these commodities rises. When there is a genuine shortage of physicians, the real dollar cost of their services rises. But the salaries of engineers have been declining, in terms of real dollars, since 1969!!! How can this indicate a shortage? We have shown, on the following page, how the starting salaries of engineers who are fresh out of college have been falling, in terms of real dollars. But those who benefit from the continued seduction of the young have not elected to inform the American public of this.

The "shortage" myth has been promulgated by the two groups who benefit from such lies: the academics and the corporate executives. Now that the World War II baby boom is over, we are closing elementary schools, junior high schools, and high schools all over this nation. It is now the turn of the universities, and they have responded, out of a sense of self-preservation, by crying, "Engineering shortage." NONSENSE!!

But the principal proponent of the shortage myth has been the corporate executives and their professional association, the American Electronics Association. This organization is composed of about 1,200 employers of engineers, whose profits depend, in part, on how low they can pay their engineers.





B -- THE "REPORT" OF THE AMERICAN ELECTRONICS ASSOCIATION

In May 1981, the American Electronics Association issued their report called "Technical Employment Projections - 1981, 1983, 1985". In November 1981, the Committee of Concerned EEs issued its report, "A Critique of the Report of the American Electronics Association". This critique was prepared by myself and two other engineers, all professionally trained, and all of whom have experienced layoffs caused by an oversupply of engineers.

The Committee of Concerned EEs reported that the report of the American Electronics Association projecting huge shortages of engineers was "inaccurate, biased, ambiguous (perhaps intentionally so), based on duplication of data, and in violation of this nation's Age Discrimination in Employment Act."

The way in which the American Electronics Association mis-computed its results so as to show the greatest possible projection of "engineering shortages" from its skimpy and unreliable data is of technical interest to those of us who have been trained in statistics and data reduction. (Note that the three engineers from the Committee of Concerned Electrical and Electronics Engineers have had this training.) But it is in the actual questions that the "shortage" projection is most obviously at fault.

When many employers, all of whom are competitors, are asked the same question, there is a great chance for redundancy. For example, when BOEING, McDONNELL-DOUGLAS, AND GENERAL DYNAMICS ARE ALL ASKED ABOUT THEIR NEED FOR ENGINEERS IN THE YEAR 1985, ALL MAY BE BIDDING ON THE SAME AIR FORCE CONTRACT FOR A NEW BOMBER!!! EACH OF THESE EMPLOYERS WILL NATURALLY REPLY "3,000" WHEN ASKED ABOUT THEIR NEED FOR ENGINEERS IN THE YEAR 1985. But the reality is that only one (at most) employer will receive this lucrative contract. Thus, the projected need for engineers from these three employers alone has been greatly overstated!!

Projections of shortages based on questionnaires distributed to employers are notoriously inaccurate. Indeed, such responses have taken many aspects of corporate public relations, with every employer of engineers expected to provide rosy projections. Fortunately, there are ways that are technically more sound.

The best way to project the need for engineers is based on econometric data. Such an analysis was made by the Center for Policy Alternatives at the Massachusetts Institute of Technology. This group is headed by Dr. J. Herbert Hollomon. You will recall that Dr. Hollomon served as Assistant Secretary of Commerce under Presidents Kennedy

and Johnson. As stated in The Boston Globe of December 15, 1981 (page 40), Dr. Hollomon does not agree that this nation faces a shortage of engineers. The article is attached.

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DR. HOLLOMON FORECASTS "AN OVERSUPPLY OF ELECTRONIC ENGINEERS IN THE NEXT FOUR TO FIVE YEARS BECAUSE INDUSTRY DEMAND WILL NOT BE ABLE TO ABSORB THEM ALL."

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# Keeping track on 'the engineer shortage'

True or False?  
There is a nationwide shortage of engineers.

True, according to current wisdom.

After all, this newspaper and others have grown fat thanks, in part, to engineer recruitment ads.

The most recent numbers from the American Electronic Association (AEA) gave additional support to the shortage assertion, predicting a shortfall of 35,000 engineers annually through 1985. The same organization informed Congress last month of a projected demand for 199,000 new electrical engineers and computer science engineers by 1985. But supply is limited to only 70,000 new electrical and computer science graduates.

False, according to Irwin Feerst. "The whole thing is a scam to get gullible young people to fill college classrooms," insists Feerst. "There never has been a shortage of engineers."

And who is Irwin Feerst?

He is a consulting engineer and a former engineering professor at Adelphi University in Garden City, N.Y. He is also the leader of the 5,000-member Committee of Concerned Electrical Engineers, a group which considers the AEA report a sham.

To some members of the Institute of Electrical and Electronics Engineers (IEEE), he is considered a pain in the neck. But they listen to him. He has run unsuccessfully for president of the IEEE four times and recently accused two former IEEE board members of receiving their graduate engineering degrees from a mail-order outfit.

The crux of Feerst's claim is based on the laws of supply and demand. If there is an engineering shortage, engineers should command what doctors and lawyers earn. Salaries for entry level engineers should zoom to \$30,000 and experienced engineers should be earning double what they now make, he contends.

Instead, said Feerst, engineering salaries in real dollars are decreasing. That is especially true of older engineers with 10 to 15 years experience whose income premium can be as little as 30 percent more than what recent college graduates receive.

Feerst's premise hinges on the AEA figures which, he claims are "inaccurate, biased, ambiguous and based on duplication of data" because he says they are based on a poorly worded survey to which 671 member companies responded.

"What employer [particularly if the company is publicly-held] will ever project a downturn in business and therefore a decrease in his need for engineers?" asked Feerst in his response to the AEA survey. "The appearance of optimism is fundamental to corporate press relations. To sum up: Many employers use projected needs for engineers as little more than press-agentry."

Those are fighting words. AEA officials insist the shortage is very

## TECHNO-BYTES RONALD ROSENBERG



WILLIAM R. THURSTON  
"Shortage of trained people"

real. They maintain there are companies with ready dollars willing to pay for engineers if they can find them.

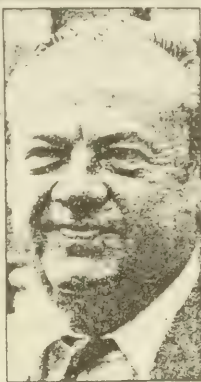
"The problems to which we [AEA] will give top priority in 1982 is the shortage of technically trained people so necessary to the continued healthy growth of the industries over the long term," said William R. Thurston, the new chairman of the 1800-member AEA and president and chief executive officer of GenRad, Inc. of Concord.

Feerst's contrarian view is shared by J. Herbert Hollomon, director of MIT's Center of Policy Alternatives. He also believes in the laws of supply and demand but goes one step further. He forecasts an oversupply of electronic engineers in the next four to five years because industry demand will not be able to absorb them all, barring a major war or a massive infusion of money for the Space Shuttle program.

Enrollments in engineering schools, he claims, are at an all-time high and climbing. But, when all those engineers graduate four years later, job choices will be fewer and thus salaries will go down.

"The supply of engineers, like lawyers, is cyclical," he insists. "Young people today looking at careers read the newspapers and see engineers are in big demand with nice salaries and they make their decision to go to engineering school. But, four or five years from now, when those kids graduate, the industry outlook in electronics will change and demand will be no greater than it is already."

Hollomon said his Center did a study of Massachusetts engineering needs. "The average salaries of electronics engineers in this state is slightly lower than that of the national average," he said. "How



J. HERBERT HOLLOMON  
"Slightly lower salaries"

do you explain that if there is such an engineering shortage?"

Still, industry claims it needs engineers today and has begun searching abroad.

Feerst wonders why. He points to the General Telephone and Electronics layoff of 197 people a few weeks ago (the company said it was related to MX missile funding problems) and the hiring freezes enacted recently by many West Coast semiconductor companies and East Coast electronics companies.

When he learned that the 197 dismissed GTE people were American engineers and not the British variety the company recently recruited, he fired off a letter to Rep. Barney Frank (D-Mass.) complaining about the "myth" of the engineering shortage and the problems of alien engineers who, he says, will work for less money than their American counterparts.

"The recruitment of foreign technical personnel is not done to alleviate any 'shortage of engineers,'" wrote Feerst to Frank. "It is not done to provide the employer with technical personnel possessing 'rare skills'; it is done purely and simply to bring in engineers who work for about one-third less than will Americans with the same experience. The result is that your constituents are out of work!"

GTE officials, however, say the

British engineers were hired under contract and earn as much as their American counterparts.

Engineers nationwide comprise 8 percent of the undergraduate college population but receive 65 percent of the job offers, according to data from the New England Board of Higher Education. They command starting salaries in the \$23,000 range, according to the IEEE - about double the amount starting engineers earned 10 years ago.

Several other members of Feerst's group claim the real issue is the over-40 engineer - the one who has not kept pace with changing technology. Industry does not want to help restrain him, the group says, preferring to develop younger talent. Thus, the shortage is not one of bodies in a research and development laboratory but of specialized skills.

Still others maintain the shortage is a hoax because engineers are not used efficiently. "There is a poor utilization of engineering talent," claims Duane Matthiesen, an engineer at the Mitre Corp. in Bedford and a member of Feerst's group. He and other claims management at many large companies will hire scores of engineers and programmers for a particular project but lack management savvy in how to use their skills productively.

In the end, Feerst may be right in debunking the AEA's claim that nearly 200,000 electronics engineers will be needed in the coming years. And Hollomon has history on his side to back his cyclical theory.

Maybe it is a question of semantics. High technology is projected to become the second largest industry behind petroleum by the end of this decade. Electrical engineers and computer scientists are definitely in high demand despite the occasional hiccups in the economy that cause some companies to announce layoffs. Some specialized engineers and data processing professionals will always be in short supply.

The problem, however, is more subtle. Older engineers who have not kept up with the changing technology are fearful that they lose out to younger engineers. They can be retrained. The question is who will pay for this re-education.

Large companies, on the other hand, worried about the competition at home and from abroad (i.e. Japan), often throw scores of engineers into a problem instead of taking the time and trouble to re-train people and assign them more effectively.



## III -- Recommendations

SALARY CONDITIONS THROUGHOUT THE ENGINEERING PROFESSION, TOGETHER WITH THE ONGOING LAYOFFS OF AMERICAN ENGINEERING PERSONNEL INDICATE THAT THIS NATION IS SUFFERING FROM A HUGE GLUT OF ENGINEERS. THE MYTH OF AN ENGINEERING "SHORTAGE" IS ESPOUSED BY THE COLLEGE PROFESSORS AND THE CORPORATE EXECUTIVES TO PROTECT THEIR OWN PRIVILEGED POSITIONS.

THEREFORE, THE COMMITTEE OF CONCERNED ELECTRICAL AND ELECTRONICS ENGINEERS STRONGLY URGES THAT ANY NEW IMMIGRATION LEGISLATION REQUIRE THAT ALL FOREIGN GRADUATES OF AMERICAN UNIVERSITIES BE REQUIRED TO RETURN HOME FOR AT LEAST TWO (2) YEARS AFTER GRADUATION. ABSOLUTELY NO EXCEPTIONS SHOULD BE GRANTED.

Mr. MAZZOLI. Dr. Lewis, you are recognized for 5 minutes.

Dr. LEWIS. Thank you, Mr. Chairman.

Good afternoon, Mr. Chairman and members of the subcommittee, I am Dr. David Lewis, chairman of the Career Activities Council of the United States Activities Board of the Institute of Electrical and Electronics Engineers Inc. In my penchant for acronyms, I refer to that body as the IEEE.

Today I am representing the Engineering Affairs Council [EAC] of the American Association of Engineering Societies [AAES]. AAES is an umbrella organization of 43 engineering societies representing nearly 1 million engineers from all disciplines of the profession. The Engineering Affairs Council is one of four AAES councils, and it is responsible for all matters dealing with engineering manpower.

With the above as background, I want to address those aspects of H.R. 1510 that have to do with the return home of foreign students who have studied in the United States.

I will not review the entire testimony; you have it; it is short. I hope you read it. I want to hit the highlights.

Forty percent of the graduates in the United States are foreign. It has been said that the postsecondary education system, particularly in English and medical sciences, is perhaps our greatest gift to the world. This opinion is supported by the fact that roughly 15 percent of the foreign students in this country are on grants from their government. They are sent here to gain the training and knowledge which can then be applied to increase their own country's productivity and standard of living.

Unfortunately, the exceptional standard of living and career opportunities in the United States have tempted many of these students to remain here rather than return to their homelands. Hence, the often discussed brain drain.

One method by which they are able to stay is to change their alien status by obtaining employment in the United States. So great is the desire to remain in the United States that many aliens will accept salaries appreciably lower than prevailing wages.

This directly affects all American engineers in two ways: (a) It decreases employment opportunities for the American engineer, particularly the older engineer, and (b) it depresses salaries for all engineers in the American work force.

For these reasons, we advocate the position that all students, upon completing their education, should return to their home country for a period of at least 2 years. After that period, they would be free to reenter the United States under the same immigration procedures as any other person. This essentially is what the proposed legislation states except for one important exception.

The proposed legislation, H.R. 1510, accepts the questionable notion that there is a manpower shortage and exempts until 1989 students with degrees in natural science, engineering and computer science, or mathematics with certified job offers in universities or in industry. After 1989, the legislation wisely drops this exemption. We of the AAES/EAC contend that there is no basis for this exemption.

There has been much debate about the shortage of technological skilled personnel. Some organizations have claimed that a criti-

cal shortage of engineers and computer scientists already exists. They argue that the foreign engineering students should be allowed to stay in the country to replace the alleged critical shortfall of engineering manpower.

The Engineering Affairs Council disagrees with that position. A single study is used to support claims that a manpower shortage exists. We believe that study is critically flawed.

Those in the engineering societies who have studied the manpower supply and demand issue basically believe in the indicators that are provided by the free market. Thus, if there were a shortage of engineering manpower, we would expect to see a significant escalation in salaries paid engineers.

In fact, the most recent IEEE salary survey data for 1981 shows no significant escalation, and salaries even decreased in constant dollars. In fact, our data base shows that the second lowest paid engineering specialty is computer science, the specialty in which the shortage is supposed to be most acute. These are hardly the results you would expect to obtain if there were really a shortage.

We would like to suggest, however, that the surplus or shortage of engineering manpower is really a nonissue for these hearings. We suggest that if there were a shortage, it should be met by training American citizens for the available jobs rather than importing or training aliens.

Finally, we should comment on the effects of the return-home provision on alien engineers. We have documented cases in which the lack of citizen status has been exploited by employers by providing foreign students and foreign engineers with less than competitive wages. We are opposed to the exploitation of alien engineers, just as we are opposed to the exploitation of American engineers, and a firm return home policy would do much to eliminate this problem.

The effect on an American engineer's career of even a modest amount of engineering manpower which can be hired at wages far below the average should be obvious. Clearly, for the U.S. citizen engineer, the salaries offered will tend to be lower and job opportunities will be reduced.

In the short run these issues may be of little concern to the Congress; however, in the long run it will become obvious to all that engineering careers are underrewarding and we can expect that the best and brightest of our students will avoid engineering.

The results of this sort of policy will have obvious disastrous consequences in terms of the Nation's further economic development, in terms of our balance of trade and in terms of having available, in times of national emergency, the highly qualified engineering manpower that is essential.

In summary, we support the return home provisions in H.R. 1510 and feel that they should be implemented now. There have been suggestions that foreign students with unique skills might be allowed to remain in the country so that they could teach in our colleges or universities.

We of the Engineering Affairs Council of the American Association of Engineering Societies do not recommend any exemptions to the return home provisions. Should any exemptions be allowed, we propose that the criteria require, at a minimum, a graduate

degree from a properly accredited institution in the field of higher engineering education and that the individual should be fully qualified in teaching and research and be paid a salary comparable to his or her U.S. citizen colleagues.

Without these restrictive criteria, we cannot believe that the individual in question really has unique and critical skills. These are minimum requirements for any exemption; however, as previously stated, we believe exemptions are not necessary, excepting students who are immediate relatives of U.S. citizens, and encourage the Congress to enact the return home provisions of H.R. 1510, effective immediately.

Thank you. I would be happy to answer any questions.

Mr. MAZZOLI. Thank you very much.

[The complete statement of David C. Lewis follows:]





Good afternoon Mr. Chairman, and members of the Subcommittee. I am Dr. David Lewis, Chairman of the Career Activities Council of the United States Activities Board of the Institute of Electrical and Electronics Engineers Inc. Today, I am representing the Engineering Affairs Council (EAC) of the American Association of Engineering Societies (AAES). AAES is an umbrella organization of 43 engineering societies representing nearly one million engineers from all disciplines of the profession. The Engineering Affairs Council is one of four AAES Councils and it is responsible for all matters dealing with engineering manpower.

With the above as background, I want to address those aspects of HR 1510 that have to do with the return home of foreign students who have studied in the United States.

The United States currently is training approximately 30% of the students worldwide who have left their home countries for study. Nearly 40% of these students are majoring in engineering and computer sciences. Approximately 40% of the graduate students in the United States are foreign students. In fact, it is often said that our postsecondary education system, particularly engineering and medical sciences, is our greatest gift to the world. This opinion is supported by the fact that roughly 15% of the foreign students in this country are on grants from their governments. They are sent here to gain the training and the knowledge which can then be applied to increase their countries' productivity and standard of living. These countries often use badly needed hard currencies to support the students while they are here.

Unfortunately, the exceptional standard of living and career opportunities in the United States have tended to tempt these foreign students to remain here rather than to return to their homelands with the technical knowledge that is so badly needed in their own countries - hence, the often discussed "brain drain." One method by which they stay is to change their alien status by obtaining employment in the United States. So great is the desire to remain in the United States that many aliens will accept salaries appreciably lower than prevailing wages. This directly affects all American engineers in two ways:

- a) It decreases employment opportunities for the American engineer, particularly the older engineer, and
- b) It depresses salaries for all engineers in the American workforce.

FOR THESE REASONS, WE ADVOCATE THE POSITION THAT ALL STUDENTS, UPON COMPLETING THEIR EDUCATION, SHOULD RETURN TO THEIR HOME COUNTRY FOR A PERIOD OF AT LEAST TWO YEARS. After that period, they would be free to reenter the United States under the same immigration procedures as any other person. This, essentially is what the proposed legislation states, except for one important exception.

The proposed legislation - HR 1510 - accepts the questionable notion that there is a manpower shortage and exempts, until 1989, students with degrees in natural science, engineering and computer science, or mathematics with certified job offers in universities or in industry. After 1989, the legislation wisely drops this exemption. We of the AAES/EAC contend that there is no basis for this exemption.

There has been much debate about the shortage of technologically skilled personnel. Some organizations have claimed that a critical shortage of engineers and computer scientists already exists. They argue that the foreign engineering students should be allowed to stay in the country to replace the alleged critical shortfall of engineering manpower. The Engineering Affairs Council<sup>1</sup> disagrees with that position. A single study<sup>1</sup> is used to support claims that a manpower shortage exists. That particular study was limited to two specific areas of the United States, heavy in certain technologies; was based on questionable demand forecasts; and contained duplication of data, making its use unreliable to describe the engineering manpower situation in the United States. A critique<sup>2</sup> of the engineering manpower situation made by the IEEE indicates that any engineering manpower shortage in America is confined to few specialties in a few geographic areas.

Those in the engineering societies who have studied the manpower supply and demand issue basically believe in the indicators that are provided by the free market. Thus, if there were a shortage of engineering manpower, we would expect to see a significant escalation in salaries paid engineers. In fact, the recent IEEE salary survey data (for 1981) shows NO significant escalation, and SALARIES EVEN DECREASED in constant dollars. In fact, our data base shows that the second lowest paid engineering specialty is computer science, the specialty in which the shortage is supposed to be most acute. These are hardly the results you would expect to obtain if there were really a shortage! I should

<sup>1</sup> American Electronics Association. Technical Employment Projections Survey: 1981, 1983, 1985. Palo Alto, California, May 1981.

<sup>2</sup> Barden, Robert A., "Interpretation of Engineering Manpower Supply and Demand Surveys", written for the IEEE United States Activities Board Manpower Task Force, October, 1981.



point out again, however, that our data is regional and national and that spot shortages may exist in certain high cost areas, or areas where salaries have not kept pace, such as in postsecondary education.

We would like to suggest, however, that the surplus or shortage of engineering manpower is really a non-issue for these hearings. We suggest that if there were a shortage, it should be met by training American citizens for the available jobs rather than importing, or training aliens.

Finally, we should comment on the effects of the return-home provision on alien engineers. We have documented cases in which the lack of citizen status has been exploited by employers by providing foreign students and foreign engineers less than competitive wages. We are opposed to the exploitation of alien engineers, just as we are opposed to the exploitation of American engineers, and a firm return home policy would do much to eliminate this problem.

The effect on an American engineer's career of even a modest amount of engineering manpower which can be hired at wages far below the average should be obvious. Clearly, for the U.S. citizen engineer, the salaries offered will tend to be lower and job opportunities will be reduced. In the short run these issues may be of little concern to the Congress; however, in the long run it will become obvious to all that engineering careers are "under-rewarding" and we can expect that the best and brightest of our students will avoid engineering. The results of this sort of policy will have obvious disastrous consequences in terms of the nation's further economic development, in terms of our balance of trade and in terms of having available, in times of national emergency, the highly qualified engineering manpower that is essential.

At the present time incentives for United States citizens to pursue graduate degrees in engineering are marginal. For example, an analysis of data gathered by the Institute of Electrical and Electronics Engineers (IEEE) shows that it takes 18 years to recoup lost wages for a person who takes off 4 years to earn a doctorate in electrical engineering. Clearly, this is not much incentive to pursue graduate education.

In summary, we support the return home provisions in HR 1510 and feel that they should be implemented NOW. There have been suggestions that foreign students with unique skills might be allowed to remain in the country so that they could teach in our colleges or universities. We of the Engineering Affairs Council of the American Association of Engineering Societies do not recommend any exemptions to the return home provisions. Should any exemptions be allowed, we propose that the criteria require a GRADUATE degree from a properly accredited institution in the field of higher engineering education and that the individual should be fully qualified in teaching and research and be paid a salary comparable to his or her U.S. citizen colleagues. Without these restrictive criteria, we cannot believe that the individual in question really has unique and critical skills. These are MINIMUM requirements for any exemption; however, as previously stated, we believe exemptions are not necessary (excepting students who are immediate relatives of U.S. citizens) and encourage the Congress to enact the return home provisions of HR 1510, effective IMMEDIATELY.

Thank you for this opportunity to testify on this important issue. I would be happy to answer any questions.

Mr. MAZZOLI. Dr. Lewis, we appreciate your being here. We have now Billy Reed, director of the American Engineering Association. Mr. Reed, welcome, you are recognized for 5 minutes.

Mr. REED. Thank you, Chairman Mazzoli. I am Billy Reed, director of the American Engineering Association, and I do want to thank the committee for allowing our organization to present its views.

When we discuss foreign students, we are really discussing two major issues in my opinion: education and jobs. We have all heard the cries from industry and academia that we have to enlarge our engineering schools and produce more engineers. There are three applicants for every opening in our schools I have heard them say.

The universities just can't expand departments enough. To me, these are very startling statements, but let's look at the facts.

There were 122,000-plus foreign students who were enrolled in engineering, science, math, and computer science for the school year 1981-82. Since we have three applicants for every opening in these schools, it seems to me there are 122,000 Americans that are being left out in the cold.

At the same time our colleges and universities are recruiting overseas, often using unethical and occasionally fraudulent methods. How much, I wonder does this type of recruiting cost the American taxpayer?

Overall our college enrollment has dropped 5 percent during this last fall. The baby boom of World War II is over and enrollment is expected to continue to drop until the late 1990's.

It seems, looking at these facts, that everyone is expecting the American taxpayer to subsidize even more foreign students to help keep these larger schools that we are being asked to pay for, open. I don't know that that makes sense to me.

Industry argues that most foreign students return to their homes after graduation. I submit that most engineering and science graduates do not go home after graduation. One Texas Employment Commission official estimates 30 to 40 percent of all nonagricultural labor certifications in the State of Texas involves student visas.

Collectively—and this to me was a real shocker—the Texas colleges and universities are in the top three users of foreign workers in the State. Perhaps this would explain why the salaries are so low in the engineering-teaching profession.

The industry associations have said that the jobs will outnumber engineering graduates by 3 to 1 through 1985; yet the member companies of these associations have laid off approximately 100,000 workers that I have been able to document. They have frozen wages, they have reduced salaries, forced people into early retirement; they have shut down plants; they have closed some of these plants and moved them overseas.

Engineers have been forced to work extended work weeks with no increase in salary; yet in December, which is the latest number I have, unemployment in the electronics industry, was 12.7 percent.

These industry associations have come to Congress asking for protection from foreign competition on 1 day, and they are here today wanting to ease the restrictions on the import of foreign workers and foreign students.

The College Placement Council states that companies will hire 12 percent fewer engineers in 1983 than they did in 1982, which was no banner year either. And one point, which I don't think has been brought up, there are thousands of American contract or temporary people who are out of work, many many of these are engineering people.

There are many who are underemployed. The American contract engineering market is far and away the most sensitive indicator of the real engineering job market. It is sort of like the spot silver market.

With the number of new jobs declining and the number of new engineering graduates at record high levels, I don't see how we can justify importing foreign engineering students or allowing foreign graduates to remain here and take our jobs. It makes no sense to me to burden the American taxpayer with the extra cost of more foreign students, larger schools to accommodate those foreign students and then let them stay and take our jobs.

The foreign student is a guest in this country and enjoys the generosity and hospitality of the American people. We cannot continue to accept ever increasing numbers of foreign students in our colleges and universities and at the same time turn away our own children.

We have to wean the industries and universities from their reliance on noncitizens. Foreign workers are not better, they are just cheaper. The cost to the company is the bottom line.

The American working engineers need your help. Every alien that goes to work in this country takes a job that an American would otherwise occupy. We must let the law of supply and demand work without being distorted by cheap foreign labor.

My recommendations are in our written testimony, and I thank you very much.

[The complete statement follows:]





# AMERICAN ENGINEERING ASSOCIATION

TESTIMONY

PRESENTED TO THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES  
AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES

MARCH 10, 1983

BY

BILLY E. REED, DIRECTOR

AMERICAN ENGINEERING ASSOCIATION

CONCERNING

FOREIGN STUDENTS

## INTRODUCTION

## CHANGES IN AMERICAN SOCIETY

While the industrial age was not born in the United States, it certainly flowered and came into full bloom in this country. Along with the technological changes which brought about the industrial revolution came many far reaching social changes. Many hundreds of thousands of people left their farming heritage behind to become part of this new industrial society.

Along with the technological and social changes of the industrial revolution came very dramatic changes in the structures of the nations corporations. No longer was it possible for the owner-president of these corporations, along with an accountant and a few clerks to oversee all that needed to be done. People were needed who specialized in certain areas of operations such as engineering, accounting, manufacturing, sales, etc....

This need for the specialists in these areas of corporate operations gave birth to a new type of worker. This person now falls under the general category of "white collar" worker.

In this same general period of time, the labor unions were formed to improve the wages and working conditions of the "blue collar" workers. As the vast majority of all industrial workers of this period were in the "blue collar" category, the economic incentive was to resist the labor unions and the demands they made.

The labor riots of the early part of this century were the result. Eventually, what is now known as the Department of Labor was formed in an effort to protect the rights and improve the working conditions of the American worker.

During this entire period of time, industry grew, required new technologies which spawned new industries, which required more workers, which required even more of these "corporate specialists". These specialists, the white collar workers, grew at a faster pace than did the population in general and faster even than industry itself. Still, the "blue collar" workers vastly outnumbered the white collar workers.

## CONTROL OF THE LABOR MARKET

In the middle of the 20th century, the seeds of a new revolution with even more profound sociological changes were being sown. This new revolution is the shift from an industrial based society, to a society based on information. With this shift from industry to information and the associated technological changes comes a dramatic shift in the make up of the American workforce.

The unions have been losing influence for years now and their membership in terms of the total workforce has been reduced considerably. In the late 1970's the American workforce changed from that of a blue collar majority to that of a white collar majority.

This change and the fact that very few white collar workers are organized must shift the incentive to hold down labor costs from the organized blue collar worker to that of the basically unorganized white collar worker.

These technological and sociological changes have brought about a new sophistication in the methods used to control the labor costs of American industry.

Corporate America now has the ability to control not only the demand for a particular skill, but also the supply of that skill.

It should be pointed out that to have "effective" control over any profession it is necessary only to have a "reasonable" control over perhaps 10 percent of the total membership of that profession.

The mechanisms used to control the supply/demand ratio and therefore the cost of labor are as varied as the corporations, and limited only by the imagination of the executives of those corporations. The mechanisms are designed to enhance or magnify the natural trends of the market. Only a subtle influence is required.

For the interrelationships of the factors influencing the labor market, see figure I.

## INTERRELATIONSHIPS OF ENGINEERING JOB MARKET

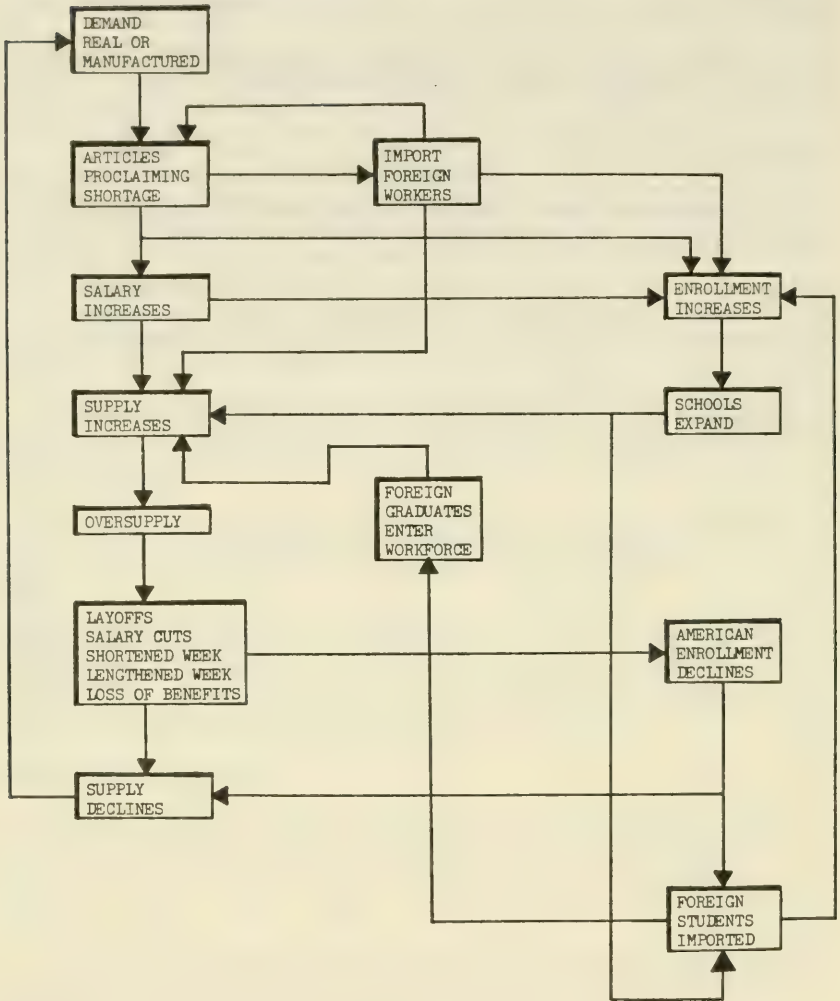


FIGURE I



## BACKGROUND

The exchange of students between countries is based on "agreements of reciprocity" between the countries involved. The premise behind the agreements is that of a cultural exchange with both countries gaining in understanding for the other.

In addition, this country has held the belief that a better educated world would result in less poverty, a better fed population, better medical attention, etc.... One way to cure the the worlds problems is through better education and understanding.

Foreign students entering the United States are issued F-1 visas. This is a temporary, non-immigrant visa. In order to maintain their student status they must establish that they are "maintaining a full course of study", and "that their SOLE PURPOSE in coming to the United States is to acquire such education" and that they have "a residence in a foreign country which they have NO INTENTION OF ABANDONING".

A foreign student must verify "that he has sufficient funds to support himself in addition to paying for his schooling".

A foreign student may work part-time if he can show that the employment is "necessary to maintain himself as a student and that the necessity is due to UNFORESEEN circumstances arising AFTER his acquisition of student status".

Practical Training may be granted to the foreign student "where it is RECOMMENDED BY THE SCHOOL he is attending and is UNAVAILABLE in the country of his foreign residence".

## GROWTH IN FOREIGN STUDENT POPULATION

In the 1954/1955 school year, there were 34,232 foreign students in the United States. The 1981/1982 school year saw 326,299 foreign students enrolled in U.S. institutions of higher education. (fig. II) This represents a growth of approximately 9.5 times the 1954/1955 school year totals.

When we look at science, engineering, math and computer science, (fig. III) we see an even more startling growth rate. In the 1954/1955 school year there were 11,735 foreign students in these courses of study. For the 1981/1982 year there were 122,710 enrolled for the same catagories, nearly 10.5 times the 1954/1955 totals.

This indicates a growth rate for the technical catagories of approximately 9 percent higher than for the foreign student population as a whole.

FOREIGN STUDENT ENROLLMENT  
(POST SECONDARY)

(Source: Institute of International Education)

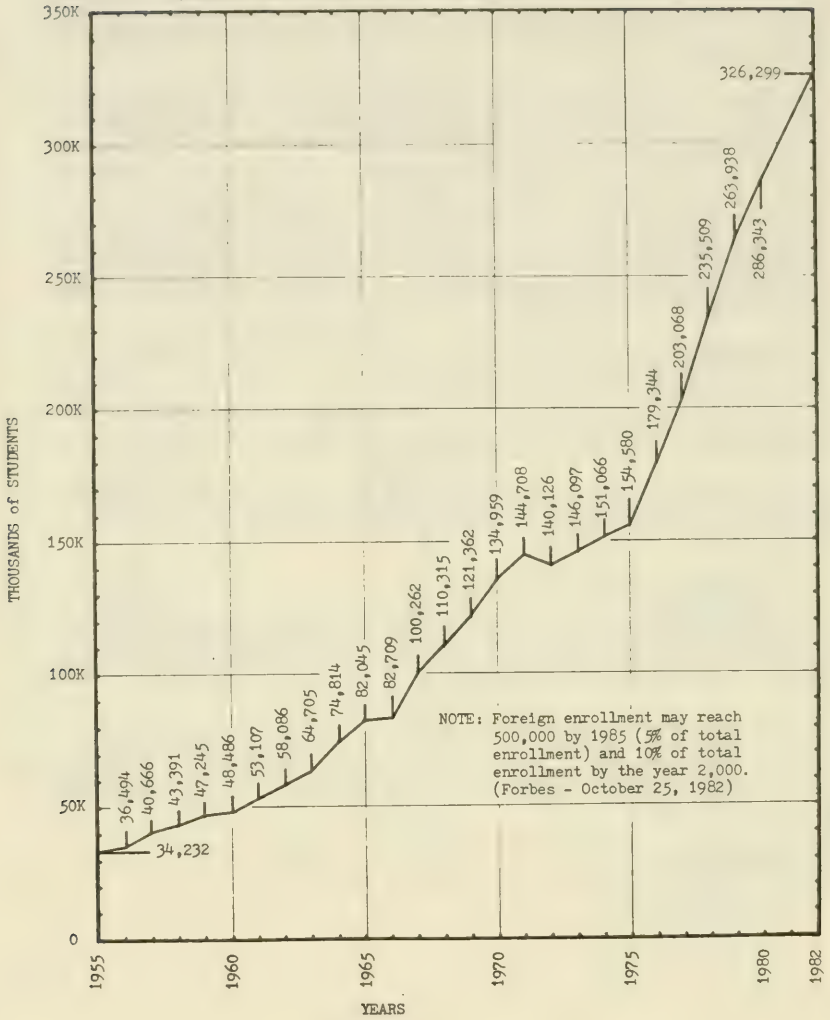


FIGURE II

FOREIGN ENGINEERING, SCIENCE, MATH AND COMPUTER SCIENCE STUDENTS  
(Source: Institute of International Education)

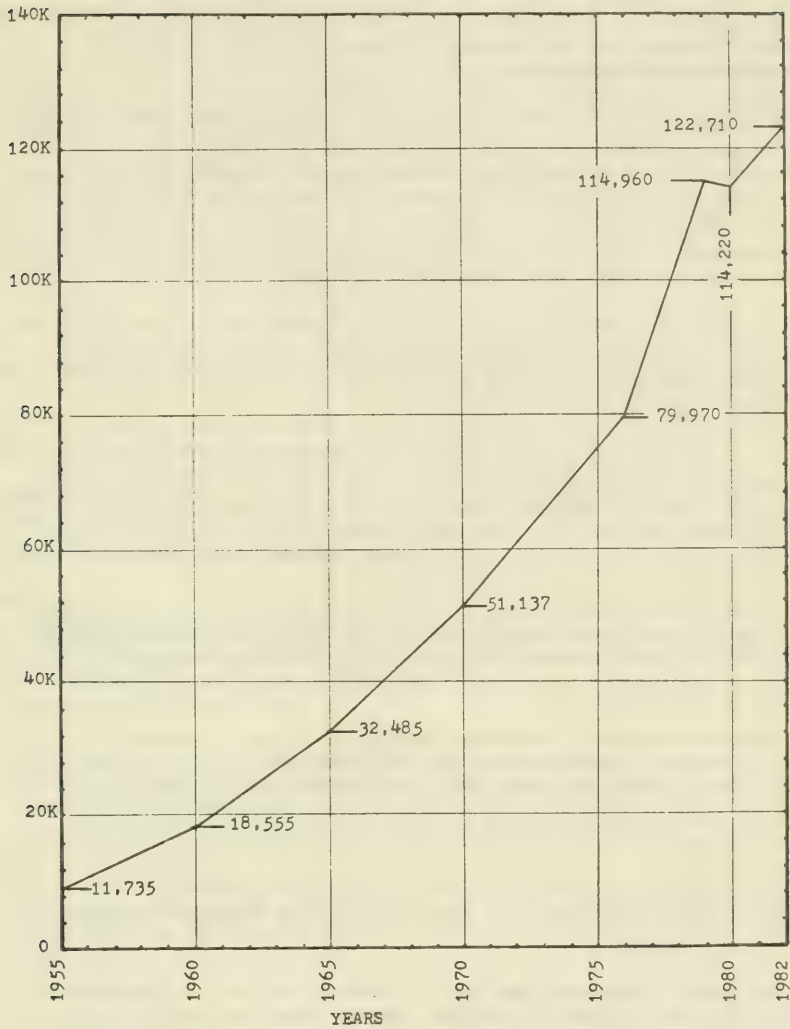


FIGURE III

## ENLARGING ENGINEERING SCHOOLS

Citing the record enrollment in our nations engineering schools and the current "shortage" of engineers as the justification, nearly all of the industry associations, technical societies and institutions of higher education in the country are lobbying for state and federal funds to enlarge the engineering schools.

Applicants outnumber openings by three to one the proponents state. (Ref. 1) "The universities just can't expand departments enough" others say. (Ref. 2) "Next to medical schools, engineering schools are the most expensive to staff and equip". (Ref. 3) "Without help from the Federal government and industry we cannot continue to accept 100,000 freshmen in our engineering programs...." (Ref. 4) are typical comments.

We all know the arguments for making the schools larger, so let's look now at the arguments against the wholesale enlarging of these facilities.

Fall enrollment for the 1982/1983 school year was down by 5%. (Ref. 5) The college-age population will shrink from approximately 17.5 million in 1980 to 13.1 million in 1995 according to an article in the Nov. 22, 1982 issue of U.S. News & World Report. (Ref. 6)

In addition, there were over 122,000 foreign students enrolled in the same schools and courses of study that the schools are being expanded for. (Fig. III) If the applicant to admissions ratio is really three to one as the American Electronics Association has stated, here is the source of 122,000 new engineers and scientists with NO additional tax dollars required. This is the source of 122,000 new openings for the American students that are now being turned away. All we have to do is phase out the foreign students now occupying those slots and replace them with our own children.

Recruitment of foreign students is a relatively common practice as witnessed by the following statement: "Still there is concern about AGGRESSIVE OVERSEAS RECRUITING, which, if not unethical, often fails to inform prospective students about what they can expect to encounter in the U.S., and what is expected of them." (Ref. 5)

Some college administrators have even resorted to criminal activities to recruit students for their schools. The indictment filed against the administrators and a recruiter stated they "falsely issued certificates of eligibility for non-immigrant F-1 student status". They were signing blank forms and the recruiter was selling them in Iran. (Electronic Engineering Times-December 6, 1982)

If foreign students are left out of the picture, as they should be, all of the other evidence fails to show a need for enlarging the schools. It seems evident, then, the only reason to enlarge the schools would be to accommodate more foreign students.

I can see where a reasonable case could be made to show that colleges recruit and train foreign students for American industry simply as a mechanism to control labor costs. The schools reward could come in the form of expanded facilities, research grants and outright gifts of cash and equipment. College officials must, as you remember, recommend foreign students for part time work or work under the practical training provision.



## DETERMINING FUTURE NEED

There are many methods used to determine future need for engineers and technical people in this country.

Some methods are very sophisticated and some are very simple. Some are based on projected growth of the gross national product and some merely count want ads in certain key areas of the country. All of these methods have two things in common. All are based, ultimately, on data provided by the user companies and all are terribly inaccurate.

A company may admit to having laid off "a few" people or say "we're not hiring at the present time", but few if any will project "no requirements" for a year or two into the future. To do so would be to admit a "no growth" situation for that particular company. This would be the kiss of death for any executive who works under the current "bottom line", make a profit this quarter mentality. It just won't happen.

It should be recognized that these projections have a great influence on literally thousands of people and may cause many people to misjudge the real potential market for any particular profession.

For example, since 1978 thousands of college students have gone into engineering because of the "great demand" and "unprecedented" high starting salaries cited by these surveys.

Congress has been asked to appropriate hundreds of millions of dollars for engineering education. "We must expand our schools and produce more engineers" the voices say, citing these surveys and the record enrollment in our nations engineering schools as the justification.

These same surveys are cited in many immigration courts across the land and in all of the appropriate congressional committees and subcommittees to show the "need" for allowing a particular foreign graduate to remain here to work or to import engineers from another country. Some people even advocate issuing permanent resident status to all foreign students as they enter the country. (Ref. 7)

Many of these reports and surveys refer to each other. If I write a report or make a survey to show a particular point of view, I may well include references to another report or survey that shares the same point of view to reinforce my "own" findings.

Where do these reports come from? The sources may be put into three basic categories. They are:

1. Technical Societies
2. Industry Associations
3. Academia

Obviously, all of these sources have a financial interest in showing a strong future demand and all have financial ties to the user companies.

## SHORTAGES

When speaking of shortages of any skill or occupation, we must consider under what circumstances a shortage may exist.

For example, there may well be a shortage of auto workers on my block, yet there may be many unemployed auto workers in my city. We must therefore set geographical limits before we may declare a shortage.

The only way a true shortage of American workers may logically be defined, for our purposes here, is on a nationwide or larger basis. Anything more closely defined and too many external factors begin to play a roll.

The second parameter which must be considered when looking at shortages is the monetary factor. A true shortage of any occupation may be determined only when the salary level is also defined. Oil is in very short supply, even on a world wide basis at five dollars a barrel, but you would have people beating your door down if you offer fifty dollars a barrel for it.

As the geographic area of consideration is reduced, more and more factors come into play. The area may not be desirable, the cost of living may be too high, the company may have a poor reputation within that profession and the area may have few employers that requires the same skills, thus limiting other employment opportunities in the same geographic area. There are many other factors as well.

Additionally, each skill or job duty that is added to the job description drastically reduces the number of people "qualified" to do that job. A job description may easily be written that excludes everyone except the person currently doing that particular job.

This brings us to the third parameter which is of prime importance in determining a shortage. That being the question of "What are we short of?"

Our colleges and universities have established their degree programs to give an individual a reasonably broad education within that particular profession. A person may also specialize to a certain extent within any given degree program. It is therefore reasonable that a shortage may be defined only in terms of the applicable degree programs. Any narrower definition will be peculiar to that industry or company.

The fourth and final parameter in determining whether there is a shortage or not is the availability of temporary workers. The temporary workforce is generally much more mobile and therefore less hesitant to move across the country or to a less desirable area. In determining the availability of American workers, the temporary workforce is nearly always overlooked or ignored.

We now have a reasonable set of guidelines for determining the existence of a true shortage of American workers. They are:

1. Does the shortage exist on a nationwide basis?
2. Are the shortage categories compatible with the basic accepted degree programs at our universities?
3. Are there no American temporary workers available?

Only if all three of the above questions are answered "yes" may a true shortage exist. That shortage may exist only at or below the current salary level for that profession. Any reasonably higher salary level and workers will become available.

Once a shortage is declared, it tends to become self perpetuating. This fact is illustrated by figure I.

#### TEMPORARY AMERICAN WORKERS

There exists in the United States, a nearly invisible, "underground industry" which employs from 100,000 to perhaps as many as 300,000 engineering and technical people. This industry will gross from 5 to 20 billion dollars per year. There are perhaps 3,000 firms providing technical services in this industry.

This industry is the "contract engineering" or "job shop" or "temporary help" industry. This industry has existed to provide temporary technical personnel to American industry for over forty years.

Not only does this industry provide professional, qualified, technical talent during times of peak workload for a company or industry, it provides perhaps an even more valuable service to industry during times of declining workload. It provides a cushion or buffer against having to layoff permanent employees during the bad times that comes to every industry.

Additionally, the industry provides a place for the senior citizen with a technical background to continue to practice his profession for as long as he is able. There is no mandatory retirement age in the contract engineering industry. Age discrimination is nearly non-existent.

Contract engineers or job shoppers are a very mobile group of people. It is quite common for a contract engineer to finish an assignment in Washington state or California one week and start to work in New York, Massachusetts or Georgia a week or two later.

It has been determined that a temporary alien worker may "temporarily" fill a permanent position, yet the determination of the availability of American workers is not required.

Current "certification of the availability of American workers" procedures are a farce. They may give an indication of the availability of American permanent workers for the Dallas/Ft. Worth area or for Rhode Island. But, by definition, you cannot certify that "no American worker is available" when the survey area is less than nationwide and when no search of the temporary labor market has been made.

Every alien engineer admitted to this country takes a job that would otherwise be filled by an American temporary worker. Certification of availability of American workers totally ignores the temporary labor market.

There are thousands of unemployed or underemployed American temporary engineers and technical workers available at this time.

## BRAIN DRAIN

We are creating a situation where we are taking the brightest and best educated of many developing countries at a time when these nations can least afford to lose them.

"In 1981 there were more than 5,300 students from Taiwan studying abroad.... We have given America the cream of our youth, not our problem children." (Ref. 8)

"Brain Drain From Poorer Lands Estimated At 300,000 in 15 Years" (Ref.9)

"Developing countries are demanding billions of dollars in compensation for what they contend is the revenue they are losing because of the out-flow of skilled people to industrial nations." (Ref. 10)

"The Global Brain Drain"...."UNCTAD has calculated the value of this "reverse foreign aid" since 1961 at \$46 billion." (Ref. 11)

## TRANSFER OF TECHNOLOGY

Foreign students are becoming recognized as a very real source of concern over the transfer of American technology to foreign countries.

Mr. John Shea, president of Technology Analysis Group has "recommended that restraints be placed on foreign students...." (Ref. 12) in a speech to the Government Microcircuits Applications Conference '82 in Orlando, Florida.

"A rising volume of foreign graduate students in the United States in science and engineering has created a new form of technology transfer with serious economic and defense effects, the Library of Congress has reported." (Ref. 13)

"Approximately 5,000 students from the People's Republic of China are currently studying in the United States." (Ref. 14)

## COSTS

While the costs of education vary from state to state and institution to institution, we may be able to make some reasonable estimates of the cost of a foreign engineers education to the American taxpayer.

The enclosed letter from the Texas Legislative Budget Board (Ref. 15) states that as nearly as they could estimate the costs for engineering students in the State of Texas, it would cost 4,520 dollars per student per year in 1982.

Based on 25 percent of this cost being covered by tuition for a Texas resident and "out of state" tuition averaging about two times the resident tuition, this means an out of state resident costs the state 2,260 dollars each for a year of engineering education. Foreign students normally pay out of state tuition. (Texas has recently passed a law requiring foreign students to pay 80% of the average cost of their education. This law does not take into account the differences in curricula.) This leaves the taxpayer picking up a little over \$2,000 per alien student.



The military services are currently advertising that they are an "alternative way to finance a college education". Preference will be given to engineering and science majors. (Ref. 16)

Why should ANY U.S. citizen have to spend 2 to 4 years in military service to be able to afford to go to college only to find that his slot in science or engineering has been filled by an alien student?

In addition, there are many costs that may never be determined. With unemployment for our college age blacks, Hispanics and other minorities near the 50% level, why should any foreign student be allowed to work even part time?

#### ABUSES

An analysis of 34 MA7-50 D.O.L. certification forms for aliens at Mostek Corp. reveals the following information of interest:

- 26 of the 34 were here on student visas, either F-1 or J-1. (76.5%)
- 18 of the 26 above worked under the practical training provision. (69.2%)
- They had received an average of 1.52 U.S. degrees
- They had attended U.S. schools an average of 3 years and 10 months.
- Degree level:
 

Bachelors.....	9
Masters.....	33
PhD.....	5
Total.....	47
- 41.2% were from Taiwan.

Of the thirty four aliens investigated at Mostek, only 15 remained at the time of the investigation. Four of the fifteen "had unauthorized employment before receiving their legal permanent resident status." One of the fifteen was in "violation of status and placed under deportation proceedings."

The remaining 19 aliens "had been terminated prior to the investigation, eleven during the layoff of February 26, 1982." (Ref. 17) It should be noted that American engineers were laid off on this same date.

Presumably the 19 aliens HAD NOT received their permanent resident status. These nineteen aliens were turned out and presumably are seeking other work in violation of their D.O.L. certification. An alien is certified to work at one company, at one address only.

Salary levels were very low, averaging only \$21,583 per year.

One Texas Employment Commission official estimates that "30 to 40 percent of all non-agriculture certification requests in the state involves student visas." Another interesting comment from the same person indicates that, collectively, the colleges and universities in Texas are in the top two or three users of alien labor in the state. Perhaps this could explain the low salaries of our engineering teachers and why they prefer to work in industry.

#### JOB MARKET

When discussing foreign students and whether they should or should not be allowed to remain in this country to work, we must look at the job market today and expectations for the future.

Mr. Fred Landis, dean of the College of Engineering and Applied Science at the University of Wisconsin-Milwaukee, states "I doubt that even a rapidly growing economy can absorb the number of engineers we will produce by 1983 or 1984." He goes on to say "Even 70,000 engineering graduates per year is more than our economy will be able to absorb during the decade of the eighties." (Ref 18)

In an article in the June 1982 issue of Mechanical Engineering titled "The Engineering Class of '82" it is stated "And, in fact, some of the reduced opportunity for engineers this year is not because of fewer jobs, but rather because more engineers are in the job market."

I have newspaper and trade journal articles documenting layoffs in the electronics and aerospace industries for about 120 companies. These articles indicate that over 100,000 people have been laid off during the last year and one half. Obviously, both of these industries are "high tech" industries employing many engineers.

Additionally there are articles on wage freezes, extended work weeks, plant shutdowns, forced retirements and salary cuts all in these same industries. These are the same industries represented by the most vocal of the industry associations on the subject of foreign students and the engineering shortage.

How are the new engineering graduates from our universities fairing in the job market? The following headlines from newspapers and periodicals give us some idea of the real market:

"Surge in Engineering Enrollments Begins to Ease Industries Shortages but Stirs Trouble at Colleges"  
Wall Street Journal - August 20, 1981

"Grim Days Ahead for the Class of '83"  
U.S. News and World Report - December 13, 1982

"Many Recent Grads Who Got Good Jobs Now Are Losing Them"  
Wall Street Journal - September 17, 1982

"Texas Grads Find Job Hunt Discouraging"  
Dallas Morning News - January 23, 1983

"Degrees Gathering Dust for Frustrated Grads"  
U.S. News and World Report - January 24, 1983

"Collegians Job Push Often Leads to Shove to See the Recruiters"  
Wall Street Journal - November 18, 1982

"Engineering Students Scrambling For Jobs"  
St. Louis Post-Dispatch - October 17, 1982

All of these articles speak of engineering students having problems getting jobs or recent grads being laid off etc..

"The College Placement Council reports companies will hire 12 percent fewer engineers next year." (Ref. 19)

"Demand is down even for engineering graduates. For those who get offers, starting salaries will be up about 2.8 percent - a much smaller increase than in previous years." (Ref. 20)

## SUMMARY

When considering the testimony given to this committee, please remember that the industry associations are representing the people who on one hand want restrictions on foreign products and on the other hand are moving their plants outside the country and are exporting American jobs with those moves.

They tell Congress of the great shortage of skilled labor, yet have laid-off hundreds of thousands of American workers during the last two years.

In reality, when we discuss foreign students and the pros and cons of their remaining in this country to work, we are talking about American jobs and who should occupy those jobs.

The decisions made and the actions taken by Congress on this "immigration bill" will determine whether we become as dependent on foreign workers and foreign technology as we have on foreign oil. Dependency on foreign technology carries with it potential consequences much worse than that of depending on foreign oil.

We must consider the massive unemployment in the United States today and what the loss of these people's talents will mean to the countries of their origin. We must consider the impact on American minorities, the dangers inherent in the transfer of our technology to other, perhaps, unfriendly nations and the protection often promised but seldom delivered to the American worker.

We cannot continue to accept ever increasing numbers of foreign students in our colleges and universities and at the same time turn away American applicants at these same schools.

We must wean our universities and industries from their reliance on non-citizens. They will not do this on their own.

What foreign student will refuse a job offer "only a few thousand dollars a year" lower than what an American with the same qualifications would command? Especially if he has the recommendation of his university. After all, if you want to become an American citizen, you must pay your dues.

What company will consider an American temporary worker when an alien student is available at 20 to 30 percent of the hourly wage of the American?

American jobs and the wellbeing of the American worker is what these hearings are all about. There is no other issue.

The American Engineering Association makes the following recommendations for the consideration of the committee. While not a complete answer to the problems faced by the American worker as related to immigration, they would go a long way toward giving the American worker equality in the job market.

#### CERTIFICATION:

1. Allow NO alien to work in this country without DOL certification.
2. The availability of American workers must be determined on a nationwide basis only.
3. Require a search of the temporary American workforce before the certification of an alien may be made.
4. Broaden the categories to be certified to be compatible with the applicable college degree program.
5. The certification of the availability of American workers be independent of any salary restrictions. (The market will adjust to a nominal increase of salary.)

#### FOREIGN STUDENTS

1. Issue student visas on an "as available" basis only. (If there is no room in the schools, no visas are to be issued. We must not continue to give preference to foreign student over our own children. We should not enlarge our schools to accommodate foreign students.)
2. Send ALL foreign students home after graduation. (We seem to have forgotten they agree to go home in their paperwork now.)
3. Eliminate ALL exemptions in the student provision. (Any exemption is prejudicial)
4. Set reasonable time restraints for a foreign student to complete his academic work.
5. Allow only one degree per degree level. (Many foreign students stay in school until they are able to get a job offer.)
6. Eliminate the "practical training" provision of the student visas. (This merely serves as a conduit to industry.)
7. Eliminate ALL provisions for working in this country while on a student visa. (This would open up thousands of jobs for our own unemployed youth.)
8. Add a provision to prohibit the recruitment of foreign students to attend our schools.
9. Add a provision to prohibit the recruitment of foreign students to work. (Most probably get their jobs from on campus recruitment.)

#### EMPLOYER SANCTIONS

1. Levy fines equal to one years salary of the average American temporary worker in that job category. These fines should be levied for the second offense.
2. Upon the third offense, an employer would lose his "privilege" to use alien labor for 10 years.
3. Any additional violations should be subject to an automatic prison sentence.



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Mr. MAZZOLI. Thank you very much, Mr. Reed.

Gentlemen, we appreciate your help today. Let me just ask a few questions. I am not sure that they are particularly sophisticated because I am not an engineer.

Mr. Calhoun, Dr. Gray, Mr. Baron, just from general reading in the newspapers, my impression is that Silicon Valley is hurting to some extent with Atari sending its activities abroad and so forth.

Mr. CALHOUN. That is correct.

Mr. MAZZOLI. This means that it could be that there are engineers looking for work. It could be that the amount of work that engineers have been doing over the past years is going down. It could be that the future which goes straight off the graphs and charts is incorrect. All the things I have been reading about place a big question mark over the future unfettered growth pattern. Perhaps we don't need as many foreign students as we have.

It may mean that the home-grown variety engineer that we produce may staff what you are talking about needing in the foreseeable future.

Tell me how wrong I am.

Mr. CALHOUN. You are right, Silicon Valley is under attack from Japan. Intel is specifically targeted by the Japanese Government. We are competing with a sovereign nation at this point. Things are tough.

Mr. MAZZOLI. Let me ask, targeted by Japan or targeted by the American citizens who have had electronic games up to here and are sick of it? I don't own a video game. You say you are under attack from Japan. There is maybe dumping going on. Or could it be you are under attack because you have outstripped the ability of the American people to absorb what you produce?

Mr. CALHOUN. First of all, let's separate the game business from the rest of the industry. Atari is a very visible company because it is a consumer product company. The game business is doing well. There are questions on Atari management specifically. I don't think you should confuse Atari with the whole game industry; and the game industry with the whole electronics industry.

Intel makes no consumer products today and is really not affected by that. Most of Silicon Valley is competing at least in semiconductors with Japan, not with the desires of Americans to play ping-pong.

The demand for electronics is going to grow—no one will debate that that growth is going to take place. The only question is in which country that growth is going to take place. Now, the question of overall employment, for example, the 12-percent figure listed, represents total unemployment, not engineers.

The fact is because of the competition, because of the recession, overall employment is down. The people who are hurt most are not engineers but the operators, the lower paid people. For example, Intel has done its most to avoid layoffs. We have not had one. We took a wage cut on a basis that was on a sliding scale so that the lowest paid people would not be hurt, the highest paid professionals would take the full cut, and we did not have a layoff. So we are trying our best to avoid that.

Now in terms of longer term, the jobs are there for the country that develops the new products. If you chase away the engineers, the overall employment will be hurt, but the economic necessity for electronics, there is very little debate that those jobs will exist someplace in the world.

Mr. MAZZOLI. I don't doubt that, too, because times change and materials change, and we have new technology. But it does cause me some concern and I have expressed it when I came out to see you last fall and I express it again today that it could be that the years of the tremendous, almost unbelievable, growth in the industry have plateaued.

Mr. CALHOUN. There is no indication of that happening. The number of new companies being created in Silicon Valley is incredible.

Mr. MAZZOLI. Even if you are not a consumer company, you say you took a pay cut—

Mr. CALHOUN. It has nothing to do with consumer products whatever. Our demand for products has not dropped. Prices have dropped in some products almost 90 percent due to competition. We are not cutting production, the unit demand for our products has continued to grow at a very high rate. Our employment increased 3,000 people last year.

Mr. MAZZOLI. My time expired. The gentleman from California is recognized for 5 minutes.

Mr. LUNGREN. Thank you, Mr. Chairman. You said earlier you didn't know whether to laugh or cry after testimony. I have been criticized on both sides here. I was the author of that one amendment (there were two parts to it), to allow the waiver, but I also insisted that we have a sunset provision in there because basically I bought both your arguments.

I happen to think that based on evidence that has been given to me, we have problems in the short run, but I also think there is evidence that unless we stem this trend we are going to be in worse shape than we are now with respect to our home-grown talent.

Now, I understand why it is important that we are the educators of the world and we get the best talent, but you should understand our perspective, we are creating laws for all the citizens of the United States whether they go to college or not, and we are determining whether people come into this country or do not come into this country. If, as some have suggested—I hope I am not overstating your testimony—that there ought to be no limits, that all who want to come and be educated, fine, and then be allowed to stay as long as they can find a job. In a sense that could be an argument of discrimination by virtue of intellectual ability.

What do I say to the person, and I met many on the Rio Grande as they come across looking for work. To them it is a difference between life or death, or being able to feed their family, and I stand there as part of the Government and say: "No, you can't come across because we have our own problems." But if you have an uncle who intellectually is brilliant and happens to go to our college, after he finishes his education in engineering, we are going to allow him to stay.

I am not saying your arguments are not appropriate, what I am suggesting is we have to look at it from the standpoint of how we



can make rational judgments about how we let people into this country. You see two people here committed to seed immigrants, that is allowing within our overall numbers of people who come in under legal quotas that a certain amount be set aside for seed immigrants, that is no relationship to people existing here who take up the greatest bulk now and have virtually all the numbers.

So, that is what we are dealing with here. We hear some of you say: "Look, there is no shortage. We have plenty of American engineers here, the fact that some are out of work is proof that we have them." We hear the rest of you telling us: "We don't have them, they may be engineers but they are not trained to do the job that we have to do."

Maybe we are supposed to be Solomon and split the baby in half, but I think we have tried to accommodate basically both of your arguments to say there seems to be a need for breathing space with the universities and the companies, but that we want to give you an incentive to do a better job of educating Americans in those positions because we, gentlemen, have a very difficult unemployment problem here.

Now, Mr. Baron, perhaps you can comment.

Mr. BARON. I would like to comment on that. I think the answer to your question is: Is there a mechanism already in place that does exactly what you say is important for this country to do? That is, to protect American workers. The answer is yes, the labor certification process.

I am really distressed that in all this discussion so little attention is given to that process because essentially what it says is that no American employer can employ an alien on a permanent basis unless he can prove that there was no qualified American for that position.

Any group of engineers or any other professionals in this country, if they can demonstrate to the State employment office, which usually does the work for the Labor Department, that there is one qualified American available for that position, the labor certification will not be granted and the alien will not get permanent residence.

So there is a protection already in the system.

Mr. LUNGREN. Let me carry that further and ask you, some suggest that one of the reasons we have to rely on foreign-born engineering specialists in our universities to be the first-level professors is that native-born graduates can do far better in industry than they can at the universities and that one of the inhibiting factors of the universities of raising their salaries in these fields is that they have the foreign born to take those jobs. It is further argued that, in essence, even though the Labor Department will go in and say: "You are not depressing the wages; the wages are at the level they are now because you have that talent to take those jobs."

Is that a fair statement or is that an unfair statement? That is what we are faced with when we try and make an accommodation here.

Mr. GRAY. I would like to comment on several aspects of the complicated question you raise which encounters this diverse and complex set of views in response.



Let me emphasize first that I would argue, as I did, for not sunsetting this provision in 1989, not because I think that foreign engineering graduates are going to be the source of the solution of the problem of staffing university faculties. That is not the case. If that was your view, 1989 might be well.

I argued rather on the grounds that talent does not come with a label "born in the United States of America," that universities, particularly the research universities, need access, have had access, should in the future have access to the pool of talent that exists on a worldwide basis and that universities and the Nation will be served by allowing recruitment on a worldwide basis for faculty and research staff. That is the argument on which I would assert that the sunset provision for 1989 disserves the national interest.

You asked about foreign-born faculty and the effect they may have on salaries in engineering faculty in particular. I believe there is little data to go around in this area, but I believe that if you look at the fraction of faculty in the 260 schools of engineering in the United States who are foreign citizens, that is to be distinguished from foreign-born——

Mr. LUNGREN. Right.

Mr. GRAY. Many are U.S. citizens even though foreign born, if you look at the foreign citizens, and you have to look at the entry-level positions, my belief is those numbers are far too small to have any substantial dampening effect on the salaries for engineers in universities.

Mr. LUNGREN. Do you have an idea what percentage that is at your university?

Mr. GRAY. At our university with a faculty of 1,000, the number of foreign citizens—and I am differentiating between those and foreign-born U.S. citizens—let me put it in context. We employ each year of the order of 50 new members of the faculty in entry level positions, fresh Ph. D.'s or in the sciences people with a couple years' post-doctorate study. Of those 50, somewhere between 10 and 20 percent might be foreign citizens.

Mr. MAZZOLI. The gentleman's time is expired.

Let me yield myself 5 minutes. Since we did not ask the other gentlemen anything, let me just ask any one of you the same kind of question.

From my unsophisticated stance, it would appear that there is less demand for engineers. For example, I was back at Notre Dame not too long ago and talked to a friend of mine who teaches in the engineering school who said they have a precipitous dropoff in recruitment from companies. They are just not going to the campuses like before. I read, even at MIT, which is the outstanding school in the Nation, there was a dropoff in recruitment. Some of your students don't get the jobs right off the top of the bat.

So let me ask you, am I sensing this wrong, or is Mr. Calhoun right, that maybe there is a little bit of a problem, a little stress, but in the long haul we really need more so we have to keep the law as it is. We can't even sunset this.

Mr. FEERST. Mr. Chairman, if I could tell what was going to be in the long haul, I wouldn't be here now, I would be at my broker's place trying to buy shares.

What I think you have to worry about the long haul, and that you, the whole Congress, and the entire Nation has been misled by, was the so-called long-haul projections made by the American Electronics Association, and let me tell you why they were wrong. Their projection in their 1981 report on the need for engineers was made by a survey of employers. I have three charts here that will make it easy.

Mr. MAZZOLI. I read your statement, all three bid on the same contract, so they all put out labor requirements.

Mr. FEERST. They are all bidding on a new Air Force bomber.

Mr. MAZZOLI. Are you sure of that? It sounds like it might be an oversimplistic answer.

Mr. FEERST. No; it is not, sir. A much better way is econometric data. Such a thing was done, and it was reported in a newspaper called the Boston Globe by a—

Mr. MAZZOLI. A newspaper just started up there, right? [Laughter.]

Mr. FEERST. The Center of Policy Alternatives at some school up in Cambridge called MIT. This was headed by a man called Dr. J. Herbert Holloman who served under Presidents Kennedy and Johnson, and he says in here, page 40, Boston Globe, that there is a glut of engineers and it is going to get worse.

Mr. MAZZOLI. Let me quickly go on. Mr. Reed, what is your feeling? My question simply is: Is there right now an oversupply of engineers and what do you look at for the long term?

Mr. REED. My feeling is, yes, that I believe there must be. I believe that the salaries of engineers would have gone up in terms of real dollars had there been a shortage. In any industry there is a certain ratio, it will probably vary between industries and between companies, of engineers to nontechnical people.

When you see 100,000 or 200,000 people out of work within an industry, it is only common sense that a certain percentage of those—perhaps not the full 12-percent unemployment, or whatever it is—are engineers.

Mr. MAZZOLI. I appreciate that, but what we need is real numbers. Does anybody have any numbers?

Dr. LEWIS. I just happen to have some numbers.

Mr. MAZZOLI. What I am really driving at is if there is anything definitive or agreed upon. The electronics industry is perhaps going to have one set of figures. Is there any agreed upon number?

Dr. LEWIS. Could I just cite some? First of all, there are statistics in my testimony, as far as the behavior in terms of constant dollars in salaries, that do not bear out a shortage.

Second, there is this survey, scientifically done, very well regarded, that the IEEE puts out. This documents that the wages paid specialists in computer science are second from the bottom of all subspecialties within the IEEE membership. There is a report of the Engineering Manpower Commission, No. 63, November 1982. I could read to you table 3 which is placement status of B.S. Engineering graduates 1972 to 1982. Starting in 1979. I won't give them all to you; 3 percent were still seeking employment upon graduation. In 1980 it was 5 percent; in 1981 it was 7 percent; in 1982 it was 14 percent, which is a pattern indicating that there is not a shortage.



Mr. MAZZOLI. Let me just yield myself 5 minutes and you will have 10, Dan.

Let me go into this because I used MIT as an example and Dr. Gray may want to talk about that. My first concern is that there may be enough engineers to suit our needs for the future.

I also believe very strongly that there is such a thing as a brain drain. We just spent all day—some of you gentlemen may have been here—trying to figure out how we help the nations in this hemisphere and all the sending nations who send their people out and kiss them goodbye because it eliminates their problems.

How can we help the Caribbean basin, the world? One answer is to improve the lot of the people in their own area. How do you do that? Some say send them bunches of money. Well, that hasn't worked.

One way is to improve the quality of their life by having people within those countries who are doctors and lawyers and engineers and agronomists who then improve life. But if we take their best and brightest, and we quickly move them into our mainstream we could not only be thwarting the desires of American blacks and women to do the untraditional—engineering—but we may condemn those countries to a fate which has produced nothing but hardship.

Let me ask you, Dr. Gray, as a leader of one of America's greatest universities, how do you see all of that?

Mr. GRAY. Mr. Chairman, I would like to comment on your question regarding the brain drain and also go back and comment on other questions raised.

I think that the question of possible brain drain has to be understood in terms of the number of young people who come here from other countries to study and then you have to look carefully at where they go afterwards, not just immediately on completion, but where they are 10 years later, what their experience has been.

My strong impression, based on experience at MIT over a 20-year period, is that many of those young people who come here are motivated very strongly and very passionately by a desire to return to their home situation, to be helpful in that developing nation because many come from lesser developed countries; many I do believe return home and do make major contributions as educated individuals in those societies.

Some, after spending time here after graduation gaining practical experience, either in teaching—because many go back and teach in major universities, and it seems one of the functions is to have them return back and engage in institution building, university building, in their home countries. Many do, but they gain experience here as teachers or researchers or gain industrial experience.

So, I think you need to look at just what they do on graduation, but where they are 10 years later. I recognize the data are hard to get on that.

I would like to respond to a question raised about placement. I can respond to this only in the context of placement at MIT. Our experience this year is that the number of people who come to recruit is indeed down a little, but I emphasize "a little." It is a little too early in the spring for us to know what the situation will be,

but I talked with the director of placement about this just yesterday. His belief is that the softness in the engineering job market that exists this year will be reflected principally in the number of offers that individuals will receive, not in their ability to find employment.

I think that the question of the nature of engineering employment, whether it is soft or hard, whether there is a shortage or oversupply, is a complex question where you need to try and sort out the consequences of the 3 years of recession—in some areas of the economy called depression—that we have been through and what effect that has seen against a longer term trend.

I think one also has to understand why it is that the patterns of employment and employment opportunity and compensation in engineering seem to be different for people at entry level positions and for people who are more experienced.

I would like to suggest that one of those issues that needs to be understood is the question of professional “technical obsolescence” which is so important among engineers where the field is changing so rapidly, where in fact the very individuals employed in the field are making that change.

If an engineer does not make strong personal efforts to remain competent at the technical edge of that field, that individual will find himself or herself increasingly underemployed, undercompensated in that field. This is not a matter for the individual alone to sort out, there is a continuing responsibility here on employers, and there is a continuing responsibility on educational institutions.

Mr. MAZZOLI. My time has expired, but you listed something that did occur to me and to my staff. That is that the reason it might be looking like there is a difference, but maybe there isn't, is that some of the engineers are not capable now of doing some of the work that is being required of engineers graduating today. In a sense, they may have obsolete abilities and need retraining. Maybe that is something that engineers or the industry have a responsibility for, as Mr. Calhoun said. You are helping the universities increase the number of chairs and increase the salaries and perks so the people will stay on and become engineering educators.

They may have a responsibility to do something with engineering students who have gone out and busted their back to help the companies become aggressive, multinational rich companies, and they no longer have the talent. I don't want to intrude on the time here, but I just want to make that as a last statement and recognize Dan for 10 minutes.

Mr. LUNGREN. Thank you, Mr. Chairman.

Maybe we can try to get agreement of some type from the panel. One question that still is not completely answered is whether there is a consensus that we are not graduating at current levels the numbers of American engineering and high-tech-oriented college graduates. Do we have agreement on that?

Mr. LEWIS. No.

Mr. FEERST. No.

Mr. CALHOUN. No; we think there is a shortage; they think there is not.

Mr. LUNGREN. What is the nature of the shortage?



Mr. CALHOUN. Let me read something from the College Placement Council salary survey, January, 1983, and it is the same source of data that they were using. It says:

The dramatic drop in engineering job offers, while noteworthy, should be kept in perspective. Over the last five years engineering grads rode the wave of continued acceleration of employer demand for new engineers. Because the number of graduates generally did not come close to matching demand, employers had to make numerous offers.

The major difference—skipping through—between now and the past is fewer offers per student.

Mr. LUNGREN. I want to get Dr. Gray's response.

Mr. GRAY. Mr. Lungren, I think that this question is in part complicated by the need to sort out the effects of 3 years of recession of downturn in the economy from what is a longer-term trend, and the question is not just relevant in terms of 1982 offers or 1983 offers but has to be addressed in terms of what the need will be in 1984, 1985, on through the end of the century.

I do believe that we are in a situation at the present time—I speak now about the economy and, in particular, the technical side of the economy—we are at a situation in which we can see a number of technical developments which will create enormous demand for engineering talent in the decade or two ahead.

Let me mention two areas, one alluded to already, one has not. One is in the area of applications of increasingly cheap reliable computational hardware, the microprocessor and all its derivatives. People think we are somehow in the computer revolution, that that has happened.

I would like to suggest that we are just at the leading edge of it, and most of it still lies ahead and that the applications of increasingly inexpensive computation is just beginning and that those applications will create a tremendous demand for engineering talent. I think you see that demand near record in the AEA projections.

The second area not alluded to is in the area of biotechnology. The whole collection of applications that will develop over this next decade out of the technology that is associated with recombinant DNA, whether methods, chemical processing, handling of waste material, whatever, will create a considerable demand for engineers trained at the intersection of biology, chemical engineering, materials processing, and so on.

I think the net of those demands is yet expressed in the economy, but they will be in this next decade. So I urge that in trying to understand the different views of the elephant that you have heard here today, differentiate between what may exist in 1983 as we come out of the 2- or 3-year recession and what may exist a few years from now.

Mr. LUNGREN. I should have stated that obviously what I am talking about is present graduates. If you graduate you are not worrying about jobs 4 or 5 years down the line. I will get back to you in a second. Let me ask Mr. Lewis to respond.

Dr. LEWIS. I would like to comment on two things. First, there was a reference made to the fact that the people are still getting offers; they are just not getting as many. We are talking about new students here. It is generally recognized that new students entering the population of engineers are the most employable product.

Now, where the real problem comes in is with older engineers. When the number of offers goes down with new graduates, the older engineers typically are having a much harder time finding their next job if they have to find one. That is an aspect that was not brought out.

The next thing I want to bring to your attention is this whole business of projecting engineering manpower. The Engineering Manpower Commission has had a history of trying to project the requirement for engineering manpower. They used to put out a 5-year forecast, a long-term forecast, and they gave it up because they were flat wrong. Nobody knows how to predict that.

The closest correlator is the American economy, and we all agree no one can predict that 5 years down the road.

Mr. LUNGREN. What is your gut feeling on the graduation of engineers?

Dr. LEWIS. I think we are graduating enough, and let me say why. There are a lot of different people who are considered engineers, although some don't have engineering degrees at all. For example, some are history majors who decide to take up computer programing. There is a large number of people that materialize when real job demands are there, and the way to judge if the real job demand is there is to determine whether the salary is there.

Mr. LUNGREN. I understand, but let me ask—I happen to be an attorney; Ron happens to be an attorney—we are graduating far more attorneys per capita, five or six or seven times what the Japanese are and from figures I have seen, they are graduating quite a few more engineers per capita than we are.

When you look at how you project your economy, it seems we better be doing some of the things they are doing in terms of having our population base set into the high-tech areas.

If you disagree with that—we are wrong as we look at the Japanese and as we look at our ability to compete. I can tell you from one standpoint, we are graduating too many attorneys, not because of jobs, but because of what is happening to society; we are becoming so litigious that—in fact, I know engineers that make more money testifying in court than they do applying themselves to anything useful.

I am surprised that you don't think we are graduating too many engineers. I said I will ask Dr. Lewis.

Dr. LEWIS. I would just like to comment on the comparisons to the German, Japanese, and Russian economies. They are radically different economies. It is a different population of students, a different society.

As I recall the comparison to Japan was about 5 to 1. I am not talking about 5 percent; I am saying suppose you were to increase your engineering staff 500 times, it boggles the mind. You are going to have people standing on the street corner repairing traffic lights with engineering degrees—500 times.

Mr. LUNGREN. You can have a lot of them in court.

Dr. LEWIS. Excuse me, I meant to say 500 percent, not 500 times. Still, the numbers are so grossly disparate that there is clearly no comparison.

Mr. FEERST. I must point out that comment like you have made upsets me. I am a little older than you are. I think back to the



1930s and hear phrases. Hitler puts Germany on its feet. The Reds feed the starving peasants. The man in Italy made the trains run on time.

The fact is why, I don't understand why this Nation always seeks as its models others. The Japanese have been fighting the United States in different ways since 1936, and I would quote, please, from a report in the Wall Street Journal of November 19, 1982, page 35, the director of engineering of NIT—NTTS is like AT&T of the United States—who said that the Japanese turn out a better quality product than we do because "the Japanese are a race of completely pure blood, not a mongrelized race as in the United States." 1982. I haven't heard that since they started to light the ovens. Why should we follow them?

Mr. LUNGREN. Well, no, I am not saying——

Mr. FEERST. What has made this Nation great, and shame on you, sir, is the attorneys. We would not have women working without our lawyers. We would not have women voting without the lawyers.

The tools of the democratic society are the lawyers, and I am willing to pay.

Mr. LUNGREN. I am not trying to create a boogeyman; it is that I hope to represent Long Beach, Calif. If you want to convince me the Japanese are not doing a good job, come to the port and you can sit on one of the Hondas or Datsuns and watch as people buy their Sony television sets.

Mr. FEERST. I understand.

Mr. LUNGREN. They are doing a job. It isn't all because of their cultural experiences. They have done a good job in education. I grew up in the 1950's with something called sputnik which indicated something is wrong with our educational institutions, and we did something about it. I am afraid we are not doing something about it now.

Mr. CALHOUN. I would like to say we have a choice in terms of looking at Japan. I think mongrels can do as good a job as any purebreds. But I do believe we have a choice of, in a sense, do we go back to an agrarian economy or stay a technical economy?

Obviously, the engineers find work in Japan. Engineers create jobs. Attorneys create jobs because every time there is one attorney, you have to have another one on the other side. So, I think both professions create jobs.

Mr. LUNGREN. They also have to have a judge.

Mr. MAZZOLI. And a chamber and a bunch of bailiffs.

Mr. CALHOUN. But engineers create jobs. But if there is a concern on this, if you are trying to decide between two positions where we disagree on this, if you err on their side and we are right, you potentially put out of employment a lot of Americans. If you err on our side and they are right, you are talking about a very small number of highly paid professionals versus the lower paid work force which tends to be a more significant matter.

Mr. MAZZOLI. Mr. Calhoun, in following up what my friend from Long Beach has said, what we would do, if we err on your side, is to create an immigration program out of what is not meant to be an immigration program. It is saying to all the people standing and

waiting in line, you are either not smart enough or not bright enough to come.

I am saying one of the problems we have, too, is that this immigration law is not just this area of student exemptions. Some of you may have sat here the last few days. We go all over the lot.

Let me shift just a second. I am not sure we can totally solve that problem, but we hope that we don't err on your side or their side, which is what I think we have done through the genius of the gentleman from California who has hit down the middle. We have given you something and at the same time we said we will give it so many years. We think you can wean yourself from the system. If you can't, come back and talk to us later.

One of the things we have heard as a criticism of American industry, particularly agricultural, is that they don't want to limit the entry of the people, they don't want to get away from illegal immigrant labor because it is tractable. And it is fairly cheap.

But particularly it doesn't talk back, it doesn't fight and holler, it doesn't yell, it doesn't complain, it doesn't ask for more wages. It says, "Thank God I am here; I will do anything you ask me to do."

Let me ask you, we are usually talking about field hands, people who don't know an abacus or a slide rule from left field.

But is there any possibility that this could also influence at this Olympian level the way things are going? Is there anything in the argument you can get a professor who doesn't talk and fight back, you can get an engineer who sits in his corner and does what he is trained to do. He doesn't organize unions, because Silicon Valley is not organized, as we all know. It doesn't get into AAUP affairs and bug you and stampede the place or picket your office. Is there any truth in this, or am I wrong?

Mr. REED. We have instigated an investigation of Northrop Corp. of California, at least you, Mr. Mazzoli, have received a copy of that. Within the context of the report that was made, they speak of Northrop—a person there is quoted as saying in effect we don't want the American contract engineers, we want the foreigner because he is in essence in bondage to us until such time as the job is over or his paperwork runs out.

Mr. MAZZOLI. That is one example.

Mr. REED. There is another thing that enters into this and one of the fellows brought this up, and that is the certification of specifically the engineering people. That is, it just doesn't work, period.

For one thing, it totally ignores the temporary or contract people. They are just treated as if they don't exist at all when it comes to the certification.

The other thing is that they are certifying there are no Americans available, yet it is done in the Dallas-Fort Worth area, not done on a nationwide basis.

Mr. MAZZOLI. Right. I asked the question earlier in another context, would an engineer go from Bangor, Maine to Fresno?

Mr. FEERST. Yes.

Mr. REED. That is what contract engineers are for.

Mr. MAZZOLI. I questioned whether a field hand would do the same, and I got blank stares.

Mr. REED. That is what contract engineering is all about. We are here to handle that.



Mr. MAZZOLI. Who wants to talk about the tractability question. The fact we get a laborer which we like to have around because they do what they are paid to do and they don't ask for a lot more than that. Is there any truth to that, Doctor?

Mr. GRAY. My associates will have to speak for the industrial situation, but from the point of view of universities, I can only say that the faculty have been ascribed as people who think otherwise and I see no tendency—

Mr. MAZZOLI. Whether American or foreign born, they learn quick, they think otherwise?

Mr. GRAY. Certainly, as has been suggested here, the job market. If you define it, however, for faculty or for engineers, it is clearly a national job market.

Mr. MAZZOLI. Thank you.

Mr. CALHOUN. At least on the engineering side I think a comment would be in order, they may stay a short period of time, but if they are not happy they will go to another company or start a company. Last week, President Reagan made a statement in praising a company called Daisy Computer. That company was founded 2 years ago by someone who left Intel, an engineer who left who was an immigrant we brought into this country.

He may not have been happy with Intel—he may have been happy but wanted to start a company. He employs 150 people now. You can't keep people, as you say, tractable. No; he will just leave.

Mr. BARON. I am troubled by the fact that in all of this discussion of shortages and nonshortages, the impression given is that there is no system today that is protecting American workers. Let's look at the numbers for a minute. In talking about what has happened to American engineers or any other group, one would get the impression from some people on this panel that there are tens of thousands of alien students taking jobs by becoming American residents.

The last year in which there was a full count by the Immigration Service, which was only 3 years ago, there were fewer than 15,000 foreign students able to get permanent residence. The majority of those, according to Immigration statistics, did so by being related to an American or by marrying Americans. Less than 50 percent, probably less than 7,000 individuals out of the entire foreign student population of 286,000 reported in 1979 were able to adjust to permanent residence. Thus, we are not talking about large numbers of individuals as was implied.

The other point is, with all the talk about Government efficiency, I don't think the Government should create a second obstacle course which is precisely what this whole waiver system would be. It would put an enormous burden on the Immigration Service, which doesn't have the manpower to do its present job, if they also had to administer a system of waivers. The existing labor certification system continues to do an excellent job of making sure that there are no qualified and available American workers before an alien could become a permanent resident.

So it seems there has to be some thought given before creating another system of bureaucracy when there is a workable procedure which already addresses the subject.

Mr. MAZZOLI. Let me quickly go to Mr. Feerst.

Mr. FEERST. Yes; thank you. You know, the labor system simply has not worked. I go back to the horror stories on page 9 and 10, a Ph. D. microbiologist is going to be hired for \$6.82 an hour, certified. You know they will not find any U.S. person who will work for that. That is why they put the wages low to make certain.

Mr. MAZZOLI. I was going to ask that question, not just because of what Mr. Feerst said, but other people have said that. They wonder about the reliability of the labor search system. Labor will tell you it doesn't work, and it produces a product that sometimes is not necessarily accurate.

Dr. LEWIS. I would like to comment on two things. First of all, my colleague at the other end of the table pointed out there were a limited number of permanent visas. The real game is temporary visas.

Mr. MAZZOLI. So the adjustment—the 15,000—is a low number because you get extensions and things like that to keep everybody here.

Dr. LEWIS. That is right. He forgot that.

Mr. MAZZOLI. Again with respect to you, Mr. Baron, the question is not just the 15,000. There is evidence that there are extensions of other visas, and then they lead to different things. Plus a lot of people just drop out, and it is hard to know exactly.

Dr. LEWIS. May I comment on your request for information, are these people servile, in some sense second class? The information we have is not that they are necessarily more tractable to deal with, but that the big thing appears to be that you have them in bondage and you can hire them for less. I don't say this happens routinely, but it happens enough that it is an abuse and it causes people concern.

Certainly I don't think it happens at MIT, but I think it might happen off in the boondocks.

Mr. MAZZOLI. Mr. Reed, and then I will wrap it up.

Mr. REED. The point was made that there were 15,000—or 7,000 came in under the certification program, whatever the number. I think it should be stated that as soon as a technical graduate gets his degree he is immediately eligible for an H-1 visa which requires no labor certificate.

Mr. MAZZOLI. What is that?

Mr. REED. A person of distinguished merit and ability.

Mr. MAZZOLI. Because of the fact they are distinguished, so-called, they don't have to be certified?

Mr. REED. There is no requirement on salaries, that is right, and no requirement on anything—no certification required.

Mr. MAZZOLI. So, they adjust their status to H-1. Is that an immigrant visa?

Mr. REED. That is an H-1 temporary visa. And it can be extended forever.

Mr. MAZZOLI. So you have a lot of people under that.

Mr. REED. Also any practical training requires no certification.

Mr. MAZZOLI. So a lot of people stay on.

Mr. REED. And you never find them in the certification process.

Mr. MAZZOLI. Let me say this one thing, one of the problems when we raise these issues, is not to provoke anyone or to cast aspersions, but to give you an idea of what we face when we go to the



floor on this. It is a strain of chauvinism in all of us, we are proud of our country, we love America, we honestly think America can do everything. We know it can't, but we think it can.

And this strain says it is pretty tough to believe that we don't have American women, American blacks, American minorities who can't take some of these jobs, who couldn't be recruited.

It is hard to suggest that it is not easier to recruit in Seoul, Korea, or Bangladesh or in Pakistan than it is to recruit in downtown Newark or Louisville, Ky. The truth of the matter is, it may be easier to get your group of students from abroad for a lot of reasons than it is to recruit them here. It is easier to get them from abroad than to worry about correcting the educational system at its roots which, of course, as the gentleman said, has resulted in the problem we have today.

Mr. CALHOUN. Find me a black female Ph. D. and I will hire her in a second. They don't exist. The problem is getting them through the academic system.

Mr. MAZZOLI. This is one of our problems, they don't exist in part because an effort may not have been made to recruit that woman or the minorities.

Mr. CALHOUN. Into the universities.

Mr. MAZZOLI. Well, that is what we are saying. Frankly, Dr. Gray and others, the sunset is meant to walk between the position which is no more, close it down; and your position which is to say let anybody, high tech or not, stay. Again, with respect to you, Dr. Gray, it is hard for me to believe that we don't have, for example, a doctor of humanities somewhere driving a cab in New York City that couldn't fill some of the responsibilities.

It is hard to extend this principle of waivers to nonhigh tech or nonengineering areas. The gentleman has been patient. I yield whatever time is left to him.

Mr. LUNGREN. And you will let me ramble on.

Mr. Baron, you talk about the obstacle course, frankly the waiver would not allow for that. So of necessity you have to set up another sort of hoop to jump through so that you have the ability to make these exceptions. The Senate bill has a total of 1,500 per year, but we kept that out. They are really strict. We were trying to steer a midcourse here.

Dr. Gray, I don't want to put you on the spot, but could you tell me from MIT how many graduates you had last year who were foreign citizens in engineering programs?

Mr. GRAY. At the undergraduate level—differentiating between undergrad and grad, at the undergrad level were 1,000 graduates a year, about 5 percent or 50 are foreign citizens.

We have for many years held a strict quota on the number of foreign applicants at the undergraduate level. If we did not do so, we would be swamped.

Mr. LUNGREN. What about the graduate level?

Mr. GRAY. At the graduate level, it is 30 percent, 30 percent of those admitted, 30 percent of those who graduate are foreign citizens.

Mr. LUNGREN. And comparable numbers for black Americans?

Mr. GRAY. At the undergraduate level, 7 percent of the entering student body are black Americans.

Mr. LUNGREN. At the graduate level?

Mr. GRAY. Yes. Our retention rate for black Americans in the undergraduate school is not significantly different than it is for all others.

Mr. LUNGREN. OK.

Mr. GRAY. Eighty-five percent of the students who enter MIT receive a degree, not all of them in 4 years; sometimes in 5 or 6 years but the overall retention rate is about the same.

Mr. LUNGREN. How many black Americans at the graduate level do you have now?

Mr. GRAY. At the graduate, the fraction of the student body who are black Americans this year is 160 out of 4,000, 4 percent.

Mr. LUNGREN. OK.

Mr. GRAY. One of the difficulties we have, and this is true not just of black Americans although it is true in an exaggerated way there, is we are having difficulty—the fraction of undergraduates at the bachelors level in engineering and other fields in our experience who continue on in graduate level has declined, and that is in part because of the attractiveness of the job market.

Mr. LUNGREN. How about women?

Mr. GRAY. Twenty-five percent of our undergraduates and graduates are women.

Mr. LUNGREN. One of the things we are confronted with is, what do we do, for instance, to bring up the level of black graduates with graduate degrees in engineering so that they can get these jobs, the Ph. D. jobs. I am not saying let's blame it on the foreign ones, I don't mean that. We are just not doing the job.

I know it is not just at the higher education level. It is at the elementary schools and high schools. But we want to make sure that we are not creating a situation with immigration policy that allows an easy out that would, for instance, encourage—maybe not your institution, but other institutions to make sure that they take a significant level of foreign students, not just to educate the foreign students but because they know they can draw from that group to be their junior level professors.

We have some real problems in this country with unemployment. We have some real problems with mobility of minorities; OK, we ought to do something on that as well as helping the other countries. There is no doubt in my mind one of the best things we can do with enhancing the abilities of other countries is educate many of their young people. But we also have got to make sure we are not draining them of their best brains.

Mr. GRAY. If I could just comment briefly on that, sir, the question of the limit on the number of black Americans who are going to matriculate at institutions like MIT is very much tied, as you have suggested, to the issue of quality and accessibility of high grade programs in the high schools of this Nation.

It is a national scandal that only 1 out of 3 high schools in this country, 1 out of 3 offers a program that includes more than 1 year of math and science and it is a scandal that only 1 out of 6 high school graduates has studied more than 1 year of math and science, emphasizing it and the two together.

That is just not an issue for engineering or science education. That is an issue that has to do with the capability of the American



public to deal competently with the kinds of issues that arise in the course of normal citizenship.

We are moving into an age which is increasingly quantitative and increasingly technological and scientific in its character and it is a scandal that so few of the graduates of high schools are prepared in either math or science. And that I would suggest is a principal factor which limits the accessibility to programs of engineering and science to black Americans.

Mr. LUNGREN. One of the reasons for sunseting this is to keep the pressure on. In academia you influence greatly elementary and secondary school education. Also, and the electronic industry in California, Massachusetts, in the Southwest, and all across the United States influences the local school boards. Your jobs depend on it.

The local school boards represent people whose jobs depend on it and we need a little more active support on the local level. Frankly, those people just can't look to the U.S. Congress and say you send us more money because this isn't where it is all at. It is mostly on the local level and we have got to convince people that this is necessary for us to keep our economic engine running.

I guess that is what we are doing. We are not trying to penalize anybody. We just want to make sure that you just don't come back to us in 1989 and say, hey, nothing has changed. We need the same number of foreign citizens that we had before because we can't fill those jobs.

If you come back and say we still have some problems we will listen but we would like to make sure that all of our institutions are doing something about it.

Mr. CALHOUN. I would like to point out that we have been trying to do something about it long before this bill came out. As I quoted, the amount of money that industry has been putting into science and the university system has come up 400 percent in a decade. SIA, the Semiconductor Industry Association and the American Electronic Association had programs underway to expand contributions to universities well before this bill became an issue and we see it as a real issue that we have got to solve together with the Government, deadline or no deadline.

Mr. MAZZOLI. The other day we passed the bill that might send Federal aid for that type of training at the elementary level.

Mr. CALHOUN. It doesn't solve the university problem that we are facing.

Mr. MAZZOLI. You are never going to solve it until you start at the second, third, and fourth grades. We can solve it now by giving you foreign student waivers, but in the long term we have to solve it with home-grown talent. We have 231 million people in America. I can't believe that we can't find within our own ranks the people we need. But we can't now until they have taken their training and they get the training starting in grade school.

Let me just wrap it up right here. We will take each one of you.

Mr. FEERST. I offer one more comment to Mr. Lungren's statement. You know how you will get more engineers, the same way you will get more professional baseball players. You pay them more.

Mr. LUNGREN. We can't afford to pay that high.

Mr. FEERST. No, of course not. Nor will I ever put out a candy bar with my name on it. But the fact is this, when truck drivers are being paid more than engineers and my colleagues here have quoted that, then the ghetto children in Newark and Louisville are not going to want to become engineers.

The other fact is you are dealing with peaches and plums. To educate the Newark or Louisville youth you have got a different class of people from the Brahmins who come here. These are not the huddled masses anymore. These foreign students are the Brahmins, the better educated people. You are skimming the cream from overseas and all too often not sending them back.

Mr. MAZZOLI. That is what we were talking about.

Mr. FEERST. That is right. If we start off with a determined program for inner city youth we will be better off.

Mr. MAZZOLI. Good.

Dr. Lewis.

Dr. LEWIS. Thank you. I would like to wrap it up with three comments.

First of all, as far as the academics are concerned, I think you can still get the excellent faculty you need. If there are people that are outstanding in their field there are still exemptions and means to get them into the country. It is not necessary to have recent graduates stay in the country 2 years after they get their degree. Send them to Cambridge for a year. Let them go somewhere else and come back and they will be better off for the experience. This is not a problem.

Second, regarding the alleged faculty shortage, I think academia can get the faculty it needs, the excellent people. But, it must raise the salaries. The lowest paid profession in the engineering subspecialties is education. They are very poorly paid. That is a problem that has to be addressed by putting more money in it.

As far as industry is concerned, I have said it before and I will say it again, the bottom line economic indicators do not show there is a shortage, period. As far as effects of the brain drain on Third World countries, I think it behooves us to get those people back there now and not wait until 1989 or whatever.

Mr. MAZZOLI. Thank you.

Mr. Reed, you are last.

Mr. REED. It seems to me that perhaps the funding that the industry associations are putting up to produce more engineers, to help the colleges out and all this perhaps would be better directed at the American students, the ones who are having problems getting into the schools, this type of thing, that that would be a great help.

I guess the only other thing is that in all honesty, to the best of my knowledge, I know of no second generation engineer.

Mr. FEERST. That is right.

Mr. MAZZOLI. Well, gentlemen, let me thank you all very much. It was an excellent panel. Even though the byplay was sometimes pungent, it was very helpful. We appreciate it and wish you all a lot of luck. We stand adjourned until 9:45 Monday morning.

[Whereupon, at 3:50 p.m., the subcommittee was adjourned, to reconvene at 9:45 a.m., Monday, March 14, 1983.]

# IMMIGRATION REFORM AND CONTROL ACT OF 1983

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MONDAY, MARCH 14, 1983

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES, AND INTERNATIONAL LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met, pursuant to call, at 9:45 a.m., in Room 2237, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Hall, McCollum, and Smith.

Staff present: Arthur P. Endres, Jr., counsel; Harris Miller, legislative assistant; Peter Regis, legislative assistant; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. The subcommittee will come to order.

We have a panel composed of Dr. Otis Graham, Federation for American Immigration Reform, Mr. Thomas McMahon, Environmental Fund, and Carole L. Baker, executive director, Zero Population Growth.

Lady and gentlemen, we would appreciate your indulgence, in that we have so much material and so many witnesses to hear from today. So if you would be able to limit your opening comments to about 5 minutes, and then we will be able to ask questions and get into the material which you have and explore most of the points to the depth which we believe they are entitled.

We have listed Dr. Graham, Mr. McMahon, and Miss Baker. Maybe we will continue like that.

Dr. Graham.

**TESTIMONY OF OTIS GRAHAM, VICE CHAIRMAN OF THE BOARD, FEDERATION FOR AMERICAN IMMIGRATION REFORM; THOMAS McMAHON, EXECUTIVE DIRECTOR, ENVIRONMENTAL FUND; AND CAROLE L. BAKER, EXECUTIVE DIRECTOR, ZERO POPULATION GROWTH**

Mr. GRAHAM. Mr. Chairman and members of the committee, I am glad to testify on the Immigration Reform and Control Act of 1983 (H.R. 1510) on behalf of FAIR, the largest membership organization in the United States working exclusively on immigration issues.

I am Otis Graham, vice chairman of the board of FAIR, Federation of American Immigration Reform, and professor of history at the University of North Carolina at Chapel Hill. I have brought



with me for any technical assistance Barnaby Zall, director of government relations of FAIR.

Mr. MAZZOLI. Mr. Zall, welcome.

Mr. GRAHAM. As we have over the years welcomed the committee's lead role in immigration reform, so we welcome the commendable parts of this bill, which address illegal immigration and propose long-overdue sanctions upon the employment of illegal aliens. This is a long step toward order, fairness, and the national interest in a vital area of national policy. Properly enforced—and here we have deep concerns to which I shall turn—employer sanctions will go far toward diminishing the pull factor of the immigration equation.

This is, after all, a jobs bill. In my written testimony I cite studies, to us conclusive, that some large part of the joblessness which afflicts over 10 million Americans is attributable to the direct and indirect impact of illegal aliens in the work force.

No person knows with certainty the number of illegal aliens, or the displacement factor; but we do know, from studies more numerous than the four or so I mention, that illegal immigrants work in high-wage construction industries where direct displacement takes place, and that indirect effects depress wage scales and working conditions in more than one-third of America's economic sectors where citizens face competition from a labor force recruited abroad.

It is urgent national business to enact this measure, for if there is not to be early economic expansion, Americans desperately need these jobs; and if there is to be the recovery we all hope for, we do not want Americans bypassed by employers who have come to prefer alien labor and know that they face no penalties for that preference. Immigration law most powerfully affects the workplace, and if this committee's lead on employer sanctions is not strongly followed by the Congress, some employers will continue to choose employees from a pool of labor swollen ever larger by the pressures of those coming north from the political and economic troubles of Mexico, Central America, the Caribbean and elsewhere.

This committee should see this measure as an important jobs bill, and be proud of the contribution it is able to make toward the reemployment of Americans. This contribution will only be fully realized if employer sanctions are combined with enlarged resources for enforcement. We urge the committee to amend the bill to provide sources of revenue through explicitly authorized user fees to reimburse Government for full costs of all immigration services, along with new positions for the INS as it faces mounting pressures for entry.

When we move from illegal immigration, the current bill seems to us flawed in several important ways. It is described as a part of the current effort to reform immigration laws so that immigration may be controlled. Citizens who read the bill may well wonder if the word "control" is justified. By universal testimony, Congress in the past decade and a half lost control of immigration, both numbers and composition. The numbers of those who enter doubled in 5 years after 1975, but Congress did not make this decision. Immigration totals, and to a large extent composition, are decided to a remarkable degree not by an executive agency responding to clear congressional directive, but by decisions taken by foreign nationals



to enlarge U.S. immigration totals by using the elastic loopholes of refugee admissions and unlimited entry of immediate relatives.

Last year, the original Simpson-Mazzoli legislation began, laudably, with something close to a real ceiling. But H.R. 1510 has abandoned even that wise position, and offers a much weakened and porous filter which would again confirm the loss of congressional control. Refugees remain a component outside any numerical limit, as does another large flow, immediate relatives. The bill you offer today establishes no ceiling, no predictable yearly limit. I would not want to live in a house with such a ceiling, nor would you, for the rain would come down. We at FAIR are sympathetic to another approach which could be added to the bill by amendment, by which all immediate-family admissions are subtracted from a numerical limit, say 425,000, and all other preferences are drawn from what remains. This restores the original ceiling.

The other major concern which I have time now to mention is amnesty. We wish to assist this committee by pointing out that the amnesty now projected in H.R. 1510 carries within it administration and policy flaws which will make you wish you could do that one thing not permitted with amnesties, take it back and start over. Those who set aside established law must be extremely careful of the design of amnesty, lest it do exactly what opponents have warned—not solve the problem of long-term residents, admit huge numbers to citizenship they did not obtain by established legal procedures and which then entitles them to claim social services, encourage disrespect for law and hope of yet other amnesties, and lead to increased pressures for legal and illegal immigration.

The amnesty projected here appears headed for all these errors, we fear. Its worst feature is the delegation of extensive administrative functions to volunteer agencies, which will virtually make the decision to confer visas if we read correctly the plans of the INS as expressed in internal documents to which I refer in my written testimony. We make several suggestions for improvement, and urge this committee to reconsider a surer, tested method of handling the problem of those who have lived in this society productively for many years—the advancement of the registry date to sometime toward the mid-1970's.

There are other good ideas in my testimony, but these are the highlights. The American public's desire for a more rational and limited immigration policy is clear in the polls, and puts the public at this point ahead of the Government, which again lags behind good sense and public opinion. We welcome the opportunity to work with this committee to remedy that situation through far-sighted and thorough reform of a system out of control.

Mr. MAZZOLI. Thank you very much, Professor. I thought that professors thought in 15-minute segments. You finished well within your allotted amount of time.

[The complete statement of Otis L. Graham follows:]



FEDERATION for AMERICAN IMMIGRATION REFORM

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STATEMENT OF OTIS L. GRAHAM  
VICE-CHAIRMAN OF THE BOARD OF DIRECTORS  
THE FEDERATION FOR AMERICAN IMMIGRATION REFORM (FAIR)  
BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES

ON THE  
IMMIGRATION REFORM AND CONTROL ACT OF 1983 (H.R. 1510)

MARCH 14, 1983

BOARD OF DIRECTORS: JOHN TANTON, Chairman, SHARON BARNES, OTIS GRAHAM, WILLIAM PADDOCK, SIDNEY SWENSRUD;  
ROGER CONNER, Executive Director

Good afternoon, Mr. Chairman, and Members of the Subcommittee. Thank you for this opportunity to present the views of the Federation for American Immigration Reform (FAIR) on the Immigration Reform and Control Act of 1983, H.R. 1510. I am Otis L. Graham, Vice-Chairman of the Board of Directors of FAIR. This year I am a Fellow at the Woodrow Wilson International Center in Washington, D.C.. I am also Distinguished University Professor of History at the University of North Carolina at Chapel Hill. FAIR conducts a research and public education program on immigration, and is the largest membership organization in the United States working exclusively on immigration issues.

FAIR believes that immigration policy should reflect our best assessment of the long term interest of the American people. As a beginning, we should seek to stop illegal immigration and to reduce legal immigration to a level consistent with today's demographic, environmental, and economic realities. We fully support comprehensive legislation to reform our immigration laws, and last year FAIR was the most active organization in the country working to support the Simpson-Mazzoli bill, H. R. 6514/H.R. 7357.

#### THE BILL'S STRENGTHS AND WEAKNESSES

I recently had the opportunity to review our comments about that bill, made on April 1, 1982, in testimony before this Subcommittee. This year's bill, H.R. 1510, is the same as the version of H.R. 7357 reported by the House Judiciary Committee last year.

We appreciate your efforts, Mr. Chairman, and those of the members of the Subcommittee, to move that bill. We were, as you know, extremely distressed that dilatory tactics and poor scheduling kept the House from acting on last year's bill. We hope for better results this year.

The Senate has already signaled its willingness to move quickly on its version of this bill, S. 529. The Chairman of the Senate Judiciary Committee, Senator Strom Thurmond, has twice pledged in open hearings that he will move S. 529 quickly through his committee and onto the Senate floor. We hope that the distinguished Chairman of the House Judiciary Committee, Congressman Peter Rodino, whom the New York Times calls "Mr. Immigration," will move with equal dispatch on H.R. 1510.

H.R. 1510 differs markedly from the version of the bill introduced a year ago. The major difference is the utter failure of H.R. 1510 to deal with the problems we face in the area of legal immigration.

Most observers feel the most important change needed in our immigration law is prohibiting the hiring of illegal immigrants in American jobs. H.R. 1510 does contain such a prohibition. This provision, though not as strong as we believe necessary to do the job, is the strongest part of the bill.

The bill's weaknesses, however, could undermine much of the progress we expect to come from the reforms of the immigration law. The most controversial section of the bill, the amnesty for illegal immigrants, is also one of the

most dangerous for immigration reform. Passage of this type of broad, blanket amnesty will not only disrupt all immigration law enforcement for four years, but it will jeopardize any future attempts to reform immigration laws without additional amnesties. The "visa waiver" provision of the bill is an open invitation to immigration fraud, and the retreat from some of the reforms of legal immigration is a return to the nations of origin system, with all of its racial and ethnic biases. The adjudications provisions will cause further delay in an already overburdened system.

The most glaring flaw in the bill, however, is the lack of any limit on legal immigration. Virtually every observer acknowledges that the United States cannot admit every alien who wants to come here.

The original Simpson/Mazzoli bill recognized that need for a limit and proposed an extremely generous flexible ceiling on legal immigration. The original bill's ceiling had no limit on immediate relatives of United States citizens, and no limit on refugees. The level of admissions proposed was greater than the admissions of the rest of the world combined.

We believe that this ceiling was far more expansive than necessary. We would have included all immigrants (refugees become immigrants after one year in the United States under Section 209 of the INA (8 U.S.C. 1159)), and we would have suggested a far lower number. We were willing to accept this unsatisfactory ceiling as necessary to move a bill forward quickly. Without any ceiling, this bill has very little to offer us. We will support it in the hope that the full House, given a chance to vote, will restore the ceiling.

#### UNEMPLOYMENT AMONG AMERICANS

Unlike those who oppose this bill, we see H.R. 1510 as primarily a measure to put Americans back to work. It's a jobs bill. Yet it is different from many of the jobs bills currently circulating on Capitol Hill; it does not provide some temporary jobs for those without skills or for those in particularly depressed industries.

Over the next decade, this bill could provide thousands, even millions, of jobs in industries for American workers at many different levels of skills. The jobs produced by this bill will already exist in American industry; they will be stable and productive jobs. They will be permanent jobs that employers already need and use.

How will this bill, which doesn't even discuss jobs creation in its title or its language, perform this miracle? By replacing illegal immigrant workers in American jobs with American workers.

Recently new studies have become available that demonstrate that illegal immigrant workers displace American workers from jobs. Illegal immigrants take jobs that unemployed Americans would otherwise hold. Although the displacement is not total (that is, not every job now held by an illegal immigrant worker would be filled by an unemployed American if the illegal were removed), we know that the displacement is very large, that hundreds of thousands, if not millions, of jobs would be filled by unemployed Americans.



Jack Sheinkman, Secretary/Treasurer of the Amalgamated Clothing and Textile Workers Union, conducted a poll of local labor union leaders last September. Sheinkman was the chairman of a study group of the Economic Policy Council of the United Nations Association of the United States, a business/labor/public sector task force that examined the immigration problem in the United States. Sheinkman's poll of labor leaders uncovered virtual unanimity in the belief that the employment of illegal immigrants hurts American workers.

Sheinkman asked whether illegal immigrants were taking jobs from American workers in the areas in which the labor unions operated. Seventy-two percent of the labor leaders said illegal immigrants were taking jobs from Americans.

Sheinkman also asked whether illegal immigrant workers restrict improvements in wages and working conditions for American workers. Ninety-four percent of the labor leaders said yes.

Sheinkman then asked whether the government should punish employers who hire illegal immigrants. Ninety-seven percent of the labor leaders said that the government should punish the hiring of illegal immigrants.

Sheinkman's findings are corroborated by other studies. Donald Huddle of Rice University made a study of the construction industry in Houston, Texas, in 1981. Huddle reported "an astoundingly high one-third of all workers in sampled segments of commercial construction. . . were illegal aliens. . . . More than one million U. S. workers have been displaced." Huddle found that the illegal immigrants were making between four and nine dollars an hour in wages, far above the minimum wage.

Jaime Guerra, of the San Bernardino Sun newspaper, interviewed workers in industrial parks in Southern California. At one industrial park, Guerra found that 70% of the workers were illegal immigrants, working as electricians, carpenters, welders, and cabinet makers. The illegal immigrants were making more than the minimum wage, but four to seven dollars less per hour than American workers in similar jobs elsewhere.

Just last December, the Dallas Morning News conducted surveys of construction and restaurant businesses to determine whether illegal immigrants were employed in those industries and what effect the employment of illegal immigrants had on wages. Eleven of fifteen restaurants and nine of fifteen construction firms reported that they or their subcontractors employed illegal immigrants. More important than the widespread use of illegal immigrant labor in industries where unemployment is high, however, is the Morning News finding that American citizens were available to do the work. Employers preferred to hire illegal immigrant workers because they could offer lower wages (\$6 an hour for an illegal immigrant construction worker; \$9 an hour for an American worker), and because they felt that illegal immigrants complained less and worked harder. This survey demonstrates that, given a choice between illegal immigrant workers and American workers, many employers will choose illegal immigrants even though Americans are available.

As Vernon Briggs of Cornell University points out, the employment of illegal immigrants has a particularly pernicious effect on the American worker:

When any group increases its support in a labor market, there are both employment and wage effects. This fundamental truism is overlooked by most non-economists who study [immigration]. Illegal immigrants tend to be concentrated in selected occupations in selected geographical locations. By being concentrated, they are often numerically significant enough to influence wage levels in specific markets. Hence, the availability of illegal immigrant workers can have the effect of depressing wage rates in those occupations and industries in which they are present to such a degree that these industries are no longer competitive with alternative industries or other sources of income. Hence, it is a self-fulfilling prophecy to argue that citizen workers can no longer be found to do the work that illegal immigrants do. If illegal aliens are present, they will create conditions that will reduce the availability of citizen workers.

This is exactly what happened in the agricultural labor market of the southwest during the 1943-1964 era in which the Bracero Program was in effect. Mexican farm workers were allowed to work legally in the region's agriculture industry. As a result, agricultural wages were no longer competitive with non-agricultural wages for citizen workers. Hence, citizen workers rapidly moved into non-agricultural jobs in urban and rural areas. This set the stage for employers to complain that they could no longer find citizen workers, which prolonged the Bracero Program.

Even the most vociferous advocates of foreign labor recognize that illegal immigrants displace American workers in some jobs. Wayne Cornelius, an avid advocate for open borders with Mexico, admitted in a 1982 study of Mexican

workers in the San Francisco, California, area, that: "Undoubtedly indirect displacement of U.S.-born workers and legal immigrants by Mexican illegals does take place as specific labor markets become depressed."

Federal officials are not unaware of these studies or of the implications for employment policy these results portend. Virtually everyone in the country hopes for economic recovery. Part of the desire for economic recovery stems from a desire to put America's unemployed back to work. Yet uncontrolled immigration is a danger to those hopes. Former Undersecretary of Labor Malcolm Lovell last year reported, at a seminar on displacement of American workers by illegals, that forty million American workers are in jobs in which they face competition from illegal immigrant workers. Since many of the jobs that should be created by the economic recovery will be in the area of competition between immigrants and American workers, there is a significant risk that many of the jobs created would go to illegal immigrants, and not to unemployed Americans.

The danger that jobs created by the economic recovery would go to illegal immigrants is a part of the economic recovery program with which this Subcommittee must deal. The Judiciary Committee rarely becomes involved in jobs creation bills, but here the Committee must be involved in a jobs protection bill.

The proponents of this bill should not shy away from discussing the link between immigration and employment. This bill will free hundreds of thousands of jobs in the near future, and potentially millions of jobs in years to come. Further, it will protect jobs created by the economic recovery that would otherwise be lost to illegal immigrants. This result is significant and should be regarded as a direct benefit. We suggest that the Subcommittee include an assessment of the expected jobs creation effect of this bill in its analysis and report, and that the Congressional Budget Office include the effects of that jobs creation in reduced governmental expenditures in its cost and revenue projections.

#### THE TIME FOR IMMIGRATION REFORM IS 1983

The time to pass immigration reform legislation is now. Unemployment is still at double digit heights. Increasing resentment by American minorities and the public at large is building toward a possible backlash against immigrants and immigration in general. The Congress is extraordinarily sensitive to the issue this year, after three years of preparation and effort. There is a widespread and growing feeling among opinion makers that 1983 is the year in which immigration reform legislation will finally pass.

The Committee and Members of Congress, however, would do well to heed the warning of James Russell Lowell that: "Truly there is a tide in the affairs of men, but there is no gulf-stream setting forever in one direction."

The dangers of failing to take advantage of this moment are very real. 1983 offers us a unique window of opportunity that may be closing. Frictions between Americans and immigrant groups is rising; violence has broken out between American minority groups and immigrants in cities across our country. Public opinion polls continue to reflect huge majorities of the American people who want to bring legal immigration below 400,000 per year, and to stop illegal immigration.

As you know Mr. Chairman, those of us who work in immigration reform do not want to halt immigration altogether. We are interested in controlling immigration, in reducing immigration to a level consistent with our national interests, and in stopping the traffic in human misery that is illegal immigration. But these rising tensions portend a building resentment that should concern every caring and thoughtful Member of Congress.

#### THE NEED FOR AN EFFECTIVE AND WELL-BALANCED BILL

We must not delude ourselves, however, into thinking that activity is the same as reform. Ill-conceived or unworkable proposals adopted in an effort to pass a bill -- any bill -- would be a tragedy.

That realization requires us to oppose certain parts of this bill. We cannot support measures that will worsen our immigration situation, however well-phrased may be the rationale. We desperately want immigration reform, but we are unwilling to ignore impending disasters in the hope that the good will outweigh the bad.

It is our intention to support changes in this bill, in the hope that the lengthy legislative process will cure its ills, at least to the degree that the real reforms in the bill will not be subverted by the dangerous provisions introduced by selfish and closed-minded narrow interests. If, however, we find that the bill will hurt the cause of immigration reform more than it will help it, we will not hesitate to oppose its final passage.

#### RESTORING THE CEILING ON LEGAL IMMIGRATION

One the problems with H.R. 1510 which we believe will hurt the cause of immigration reform more than it will help, is the lack of any ceiling on legal immigration. The Senate version of the Simpson/Mazzoli bill, S. 529, contains not only a ceiling on legal immigration, but also vitally-needed reform of the legal immigration "preference" system.

Regaining control of legal immigration is vital to any reform of our immigration laws. We consider the lack of a ceiling on legal immigration or lack of any other attempt to address the problems which exist in legal immigration an unforgivable flaw in H.R. 1510. If the provisions which expand the "rights" of aliens to claim legal immigration benefits without any ceiling are retained, along with a broad, blanket amnesty proposal, we shall have no choice but to appose the final passage of H.R. 1510.

The Senate and original House versions of the bill included a ceiling on all legal immigration (except for refugees, who are treated separately). Last year, the House Judiciary Committee removed the ceiling provisions, along with proposals for new immigrant preference categories.

We expect that an amendment will be offered to H.R. 1510 to restore the ceiling provision (though not the preference category changes) to the original Simpson/Mazzoli bill Structure. The ceiling would be set at 425,000. This amendment would also restore a provision to review the level of admissions every two years.

#### Why A Ceiling Is Needed

A ceiling is needed because immigration to the United States is out of control. In 1976, 400,000 legal immigrants came to the United States; in 1978, 600,000 were admitted; and in 1980, more than 800,000 aliens came here legally. These high rates of immigration can be expected to continue, with about 700,000 persons a year entering legally (in addition to more than 500,000 per year who enter illegally). The combined level of legal and illegal immigration means that more immigrants are coming to the United States each year than at any other time in our history.

Immigration is doubling our rate of population growth. If immigration continues at the present rate (about 1,200,000 people each year), the U.S. population will grow to 336,000,000 by the year 2030. Rapidly increasing population complicates the resolution of every major national problem. Recent public opinion polls show that the American people want legal immigration held below 400,000 per year.



### How a Flexible and Generous Ceiling Would Work

Immediate relatives of U.S. citizens (spouse, minor children and others) are not limited by this amendment; any number of these close relatives can enter in any year. But in the next year, the number of immediate relatives allowed to enter would be subtracted from the number of visas available to other, less close relatives.

Refugees are not included in this ceiling; their number will continue to be set in consultations with the Congress. Any number of refugees can enter in a year without counting against the ceiling.

As an example of how this amendment would operate, if 150,000 immediate relatives were admitted in 1983, 275,000 less close relatives would be given visas in 1984 (current law allows 270,000 less close relatives to be admitted each year). In addition to the 275,000 other relatives, another group of immediate relatives (say 160,000) could enter in 1984, and refugees could enter in numbers set by the consultation process.

Every two years, the President would report to Congress on the impact of immigration on the United States, and will recommend whether the ceiling should be altered. The House and Senate Judiciary Committees will review the report and recommendations of the President. A similar procedure was established in 1980 to determine the level of refugee admissions for each fiscal year.

### Opposition to a Ceiling

Some of those who oppose a ceiling claim that we must wait until after legalization of status (amnesty) is given to resident illegal immigrants before regaining control of legal immigration. We believe the reverse is true: we should regain control of our legal immigration system before an amnesty program accelerates the already-increasing demand for legal immigration. To do otherwise would mean that any level of immigration we set in the future would be distorted by the demands of aliens who have just received the benefit of an amnesty program.

Other opponents of setting a ceiling claim that the existing "preference" system (by which some immigrants to the United State are selected) is "working." By "working", these critics mean that more and more people are entering the United States each year, and the waiting periods for immigration are short. We believe that the level of immigration should not be set by the demands of intending immigrants, but by the national interest of the United States.

Many opponents of regaining control of legal immigration contend that any changes in the legal immigration system would stop "family reunification." "Family reunification" generally means the ability of immigrants and U.S. citizens to bring relatives into the United States. The present immigration system actually encourages aliens to break up families in other countries in an effort to send one relative to the U.S.. The new immigrant then brings in relatives, who then bring in other relatives. This "chain migration" pattern has resulted in new immigrants requesting the immigration of as many as 64 relatives at one time.

The phrase "family reunification" as applied to defend the current preference system is a misnomer. Only rarely does our existing preference system reunify a family which was split apart by forces beyond its control. More commonly, our preference system breaks families apart in source countries in the hope that the migrating family member will later be able to bring the rest of the family into the United States. This is a chain migration system.

#### How Our Immigration System Should Work

We believe that the country and the immigrants are better served by a system of "packet migration," in which an immigrant and all of his or her family comes to the United States at one time, without future chains of relatives following in the future. Our immigration system, with its provisions for "following to join" or "accompanying" aliens makes packet migration possible now.

Our immigration system is already the most generous in the world. We admit far more immigrants for permanent residence than the rest of the world combined. It is sad that we cannot admit every person in the world who would like to come here, but we must make choices. We believe that the choice we make should be to admit as a group those family members closest to United States citizens and permanent resident aliens as a group.

We believe that some limit on legal immigration is inevitable. We should make the generous decisions necessary to create a flexible and reasonable ceiling on legal immigration or our future while we still can. If we wait too long to make these decisions, our generous traditions will begin to suffer from the same backlash which is making actions controlling illegal immigration irresistible.

This Subcommittee should restore the ceiling on legal immigration, broad though it is, to H.R. 1510.

#### OTHER CONCERNS WITH S. 529

Mr. Chairman, I will now discuss some other important concerns we have about this bill:

#### Enforcement of the Reforms in H.R. 1510 is Necessary for Their Success

We are deeply concerned that the bill will not be adequately enforced. Without a proper level of enforcement, no law, no matter how strongly desired or well-conceived, will be fully effective. This measure is by no means self-enforcing. Though we can expect voluntary compliance by American employers to take care of much of the illegal alien problem, many of the reforms proposed in this bill are aimed at actors who cannot be expected to be as cooperative: irresponsible or unscrupulous employers, and aliens who want to come to the U. S. despite our laws. Experience reveals that both groups will go to great lengths to circumvent or disregard our immigration laws. Therefore, a stronger enforcement commitment is required.

This Subcommittee must give more serious thought to the enforcement needs of the Immigration and Naturalization Service. Congress has provided more funds for the INS than asked by the Administration. But we have made only the most modest beginning to reverse a process that has taken twenty years to develop.

This Subcommittee should take the lead in determining what are the real needs of the INS in immigration law enforcement. You cannot expect the Administration, in the throes of budgetary crises and with the burden of undoing years of budgetary neglect of INS, to produce a proposal for an acceptable level of funding.

I am not blindly asking for more funds. I am asking that this Subcommittee recognize the magnitude of the task it is placing before the INS. Years of neglect have left the INS battered and weary; it is unable to carry out its present assignments. It is true that present INS personnel can be expected to rise to their new tasks with enthusiasm, but even the most motivated individuals are not able to conduct an overwhelming task without help.

In these difficult financial times, it would also be well to provide a source of offsetting revenue for the expenditures provided in H.R. 1510. While the bill contains some half-hearted language entreating the Attorney General to charge user fees, this provision adds nothing to existing governmental powers to do so.

Those who seek the benefits of INS services should be prepared to pay the full cost of those services. Residence and citizenship in the United States are among the greatest gifts that can be provided any person; the taxpayers should not be called upon to subsidize intending immigrants. The INS should also be able to assess costs and penalties against those who use its services in bad faith or who are repeated offenders.

This Subcommittee should amend H.R. 1510 to direct the necessary level of enforcement resources for the INS to carry out its regular tasks and to perform the new duties created by this bill. In addition, the Subcommittee should provide explicit authority for the Attorney General to charge the full cost of immigration services to those who seek benefits, and to assess penalties and charges for the abuse of those services.

The amnesty proposed in H.R. 1510 should be changed.

We realize that the Subcommittee (and you in particular, Mr. Chairman) has wrestled at length with the very difficult problem posed by illegal immigrants who have worked and lived in this country for some years. You face an intractable dilemma: How can you deal humanely with those who have developed a firm attachment to our communities without violating the sense of fairness among Americans by rewarding illegality and triggering a further flood of illegal immigrants by arousing the inevitable hope for future amnesties?

Unfortunately, the amnesty provisions of H.R. 1510 are not the answer to this dilemma. The amnesty portion of the bill needs to be re-examined and re-drafted, for it is an administrative nightmare, it is unfair, and it could hamstring immigration law enforcement for many years to come.

The amnesty program proposed in the bill has an elaborate structure and multi-year implementation phase that would create a massive new administrative task for INS. It is the worst of all worlds: some illegals who don't comprehend it may not come forward; it is extremely vulnerable to the unscrupulous illegals who will seek to manipulate it to secure admission; and it is certain to stir resentment among Americans who feel that they are being taken advantage of.

The proponents of amnesty suggest that the administration of the program will be significantly eased by utilizing the services of voluntary agencies ("volags"). The idea is that the volags will do the preliminary screening of applicants for legalization, leaving INS free to adjudicate only those applicants who have passed certain early tests.

In essence, the amnesty proponents are suggesting that critical functions of the INS -- screening applicants for permanent residence in the United States -- will be "contracted out" to private agencies. As the recurrent battles between the volags and the INS over refugee processing demonstrate, any relationship between the two sectors is likely to dissolve into conflict. The volags will attempt to be lenient in processing, and will excoriate INS if it does not accept their findings of eligibility. INS officers will attempt to do their job implementing the requirements of the law, under tremendous pressure from their superiors to "rubber stamp" or quickly approve volag recommendations.

Many of the Members of the Subcommittee have already seen the INS slide show discussing their proposals to administer the amnesty. The slide show reinforces the concept of final decisions on eligibility by the volags. The INS will interview only "a random sample" of applicants. The rest will have their applications rubber-stamped without further review.

This is the first instance I can recall in which a nongovernmental body gave an alien immigrant status. Examining aliens before entry and determining if aliens should become immigrants, has, up until now, always been a federal government responsibility. Now INS is abdicating its responsibilities to the volags.

We have obtained copies of documents sent from the Central Office of the INS to its officers around the country late last year. The INS anticipated that Simpson-Mazzoli would pass, and convened a special planning team in the Central Office to prepare instructions on how their local offices should carry out the new law. These documents reveal that, in effect, the decisions of the volags will be final in millions of cases.

If you doubt that INS would allow such power to be wielded by the volags, let me quote from the documents themselves:

The Service role should be limited to supervision and administration of the program, and the only extensive involvement of Service personnel should occur at three points: (a) the training of personnel, (b) the final determination of eligibility, and (c) investigative activities to insure, at a certain level, the integrity of the program.

\* \* \* \*



1. The major emphasis must be on according temporary or permanent resident status to as large a number of eligible applicants as possible, as this is first and foremost a benefit program.

\* \* \* \*

4. In screening applications, major emphasis will be placed on security risk and excludability, with a minimum amount of screening of continuous residence.

\* \* \* \*

6. Because of the scope and temporary nature of the program, major reliance must be placed on the services of voluntary and community agencies to counsel applicants and process applications. Service involvement should be restricted to the initial training of agency personnel and other participants, and to the final determination of temporary resident status and adjustment of status.

Yet these same agencies oppose some of the conditions of eligibility they will be asked to enforce! This type of program mandates a conflict of interest in the most fundamental sense: to pay tax dollars to private agencies that are opposed to key concepts in this legislation and to expect these agencies to conscientiously implement the very provisions they oppose.

Clearly, if INS does not have the resources at present to administer the amnesty, it should get more resources for hiring and training its own employees to do the job. The participation of the volags in the process will not ease the administrative burden, and will certainly result in additional administrative or enforcement problems.

At a minimum, the legislation should be amended to permit agencies other than the volags (which oppose the passage of the bill) to share in the implementation of any program. A far better solution would be to retain INS control over the entire process.

Nor will the administrative burden be eased by simply declaring that all who appear will receive legalized status, as some claim in an effort to support an immediate blanket amnesty for all illegal immigrants. Because no one wants to admit criminals or clearly excludable people, every applicant will need to be examined to determine eligibility.

We can safely predict, therefore, that any grant of amnesty will create a tremendous administrative burden on INS. The only possible means of reducing that burden is by reducing the number of people eligible for legalization of status.

The administrative burden is not our only concern about the amnesty proposal. The costs of amnesty are enormous. Estimates run into several billion dollars in federal costs over the next five years, and an unknown additional amount in non-federal governmental costs.

To compound our concern, we know that any amnesty proposal is but an incentive for future illegal immigrants to try to enter. As you have noted in the past, Mr. Chairman, the communications channels to immigrant source countries are very good. Reasonable persons can and should anticipate many more illegal immigrants entering the country solely to seek eligibility for the "next amnesty", whether that will be three, five, or ten years from today.

In essence, what we are telling people around the world is that if they can get into the United States and avoid detection for a little while, citizenship will soon be theirs. As this amnesty is currently proposed, administrative problems may enable illegals to qualify regardless of how ineligible they may be technically, and regardless of what laws they have broken previously. We are sending a message that will encourage more illegal immigrants to come and stay as long as possible. In an effort to avoid any break in residence period, illegals will have incentives to avoid deportation AND to resist Voluntary Departure.

Most importantly, an improperly planned and poorly administered amnesty will fail to deter those who would normally return home as a result of employer sanctions. We will no longer be in a position to promise that employer sanctions will release a significant number of jobs now held by illegal immigrants (even those held by individuals with no ties to their communities). Is this subcommittee prepared to tell that to 12,000,000 unemployed Americans?

Once amnesty is given, it can never be taken away. The reverse is not the case. Thus we must be very careful in granting any amnesty.

The amnesty proposal in H.R. 1510 should be replaced by a new, simpler, but more realistic model; one that the American people can accept. That model should be a simple revision of the date for eligibility to have the INS prepare a record of permanent residence.

This procedure, known as registry, is currently in the Immigration and Nationality Act as Section 249 (8 U.S.C. 1259). Registry operates much like a statute of limitations for other crimes. The current date of eligibility for Section 249 registry is 1948. We could bring that date far forward, to the middle 1970s, and encompass most, if not all, of the illegal immigrants with long residence and close ties to the United States.

Registry is the only form of amnesty that would make sense, given our current immigration problems. Registry can be enforced by the INS using regulations and rules it has promulgated and tested in the past. Registry offers a simple, easily understood procedure that would be used by as many as possible who are eligible.

Some have claimed that a registry program would allow more legalized aliens to seek welfare and social service benefits than under an amnesty proposal like that in H.R. 1510. There will be costs to the federal government and to state and local governments under either proposal. If the Subcommittee feels strongly about its language barring legalized aliens from receiving welfare, it could amend the registry language to include that bar. Either way, the Subcommittee is trying to bar aliens who have received permanent residence within the prior three years from receiving welfare.

This criticism, however, misses the entire point of substituting a registry program for the amnesty. The only real way to cut down the costs of amnesty or registry is to reduce the number of aliens who will be legalized. The bar in section 301 of H.R. 1510 will not be effective to cut welfare costs significantly. The pressure by state and local governments to be reimbursed for costs is testimony to that problem.

The Subcommittee cannot disguise its concern that an amnesty program will be expensive by enacting exhortatory language. The Subcommittee must consider the true costs of amnesty when deciding between registry and amnesty.

Registry with a mid-1970s eligibility date keeps the number of eligible aliens at a politically acceptable level while allowing consideration for those aliens who have been in this country for some time. Again, this Subcommittee must remember that once amnesty is given, it cannot be taken away. Until future illegal immigration is controlled and employer sanctions are working, the Subcommittee should be very cautious about granting a very expansive eligibility date.

The asylum and immigration benefit adjudications provisions should be amended to match those passed by the Senate.

H.R. 1510 provides a new structure and theory for determining whether an alien should receive an immigration benefit, including the grant of asylum. This new structure is a reaction to the breakdown of the adjudications and asylum procedures of the INS in recent years. Since the 1980 Cuban boatlift, the INS has been deluged with applications for benefits of all types. Many of the problems of the agency are attributable to this overload.

The theory of adjudications under current law is to provide swift hearings at the initial adjudications level, without extensive procedural due process. Once the initial hearing is over, if the decision is adverse to the alien, there are many layers of administrative and judicial appeals. Some of these appeals are de novo proceedings, in which every part of the record and issue is open for examination; in other words, an entirely new hearing is conducted at each level.

The new theory and structure in the Senate bill, S. 529, are designed to provide more procedural safeguards at the initial hearing level. Since fewer mistakes are likely to be made when the alien is entitled to a full hearing, the later appeals can be more restricted and fewer in number. Thus, although the alien is provided with more rights initially, the process overall will be streamlined. This approach is workable and well-balanced.

The provisions in H.R. 1510, on the other hand, are not so balanced; they provide both more due process at the initial level and interminable appeals. While such an approach might seem desirable to an immigration lawyer seeking delay, given the overwhelming number of immigration adjudications, the structure proposed in H.R. 1510 is a prescription for disaster.

The current adjudications process is almost deadlocked. The number of asylum petitions filed since the Refugee Act of 1980 has skyrocketed from 5,000 in 1979 to 123,000 in 1983. Class action cases, such as Haitian Refugee Center

v. Civiletti, 503 F. Supp 442 (E.D. FLA 1980); modified sub nom., Haitian Refugee Center v. Smith, 676 F.2d 1023 (5th Cir 1982), have stopped much of the asylum processing which was taking place, slow as it was.

Even Members of Congress and the INS itself have caused part of the backlog by suggesting that unqualified aliens file frivolous asylum claims. An INS study quoted the following:

"In February 1982, a Congressman routinely wrote a constituent:

In response to my inquiry on your behalf, the U.S. Immigration and Naturalization Service . . . telephoned my office concerning your request for a further extension of your tourist visa.

The Immigration office advised that since your tourist visa extension is marked "final", you may, if you wish, file an application for political asylum, or you may file a motion to reopen and reconsider your final visa extension . . .

The Immigration office suggested that filing for political asylum would be more beneficial to you, since the motion to reopen and reconsider your visa extension would be costly, and there is no guarantee that the extension would be granted . . . (emphasis in the INS original study).

Another Congressman wrote (January 1981):

As the sister of a U.S. citizen . . . (you) come under the 5th preference category for visa purposes. Visa numbers under the 5th preference category are being issued for those petitions filed on October 1, 1979, or before. This means that after approval of the petition . . . there will be about 14 months delay . . .

I must prepare you, however, that problems may arise. Because a change of status from nonimmigrant visitor to intending immigrant is being requested, you may have difficulty in obtaining another extension of your visitor's visa. Furthermore, there are no provisions in the immigration law which allow a person to remain in the United States while awaiting the availability of a visa number . . .

You may . . . consider applying for "political asylum" by claiming your life and that of your family would be in danger if you were to return . . . Although "political asylum" is granted in cases where the applicant is successful in proving he or she is in danger of persecution because of religious beliefs or political opinion, it is not important that your application would meet the criteria. It is important, however, that processing of such an application is time consuming and serves the purpose of delaying any further adverse action by the Immigration and Naturalization Service to insist on your departure from the United States. (Emphasis in the original INS study).

Given the situation in immigration adjudications, why would we want to build a new structure which insured further delays and problems? That is what the adjudications structure proposed in H.R. 1510 would do.



All of us want swift and fair immigration adjudications. We would like those aliens who apply for benefits to learn quickly whether they will receive them. We want to avoid giving immigration benefits to those aliens who are not qualified. We want to avoid interminable waiting periods during which ineligible aliens live and work in the United States. And we would like those aliens who, in the exercise of governmental discretion, are granted benefits, to receive those benefits swiftly.

Much of the concern we have about the proposed adjudications structure in H.R. 1510 can be traced to two sources: the retention of multiple layers of review, which will delay and hinder the workings of the adjudications system, and the failure to maintain the "summary exclusion" provisions from the original Simpson/Mazzoli bill. One of the primary virtues of the original Simpson/Mazzoli bill was that it created a largely nonadversarial, speedy system, while expanding the rights of aliens at the initial hearing level.

The adjudications system proposal evolved during the course of the debate on the original bill. The Senate version of the bill was modified to reflect the responsibilities of the Attorney General in administering the immigration laws (by making the United States Immigration Board independent of the INS while still within the Department of Justice, like the present Executive Office for Immigration Review). H.R. 1510 does not make this necessary change; it makes the U. S. Immigration Board a wholly-independent body, and gives the Attorney General very little power to remedy mistakes the Board might make.

H.R. 1510, unfortunately, makes four other changes from the Senate-passed bill:

First, H.R. 1510 does not continue the "summary exclusion" provisions from the original bill. By instituting a policy of notifying each excluded alien that he or she has a "right" to a further hearing, the new system will insure that the workload of the immigration judges will increase dramatically. The summary exclusion proposal already works well with alien crewmen jumping ship. The proposed summary exclusion procedure would affect only those few aliens who do not have any documents, have no reasonable basis to enter the United States (such as a claim to U.S. citizenship), and who do not claim asylum. This is an extremely small group of aliens who have no claim to enter the United States. The summary exclusion process should be restored.

Second, H.R. 1510 continues the present practice of burdening the District Courts with class action suits for habeas corpus. Once such class actions are granted, the entire adjudications process is stopped. (Class action suits are used, in part, because they are one of the few methods for stopping deportation proceedings; the Attorney General is free in most other instances to deport an alien whose appeal is pending. Section 106 (a)(7) of the INA; 8 U.S.C. 1105 a(a)(7).) Time after time, representatives of asylum seekers have blocked the adjudications system with class action suits. It is eminently reasonable to limit access to such an abused avenue to those individuals who have been aggrieved.

Third, H.R. 1510 extends an existing stay of deportation to an entirely new area: exclusions. Under section 106(a)(3) of the INA, as soon as a petition for review of an order of deportation is filed, the deportation is blocked. This automatic stay has often been abused and should be reconsidered by the Subcommittee. As a practical matter, most aliens who have filed for review of their deportability will not be deported by INS. This automatic stay only encourages frivolous appeals such as the one which recently earned a New York lawyer a fine from the Second Circuit.

This proposal to provide a series of automatic stays of exclusion during review of exclusion decisions will obviously encourage excluded aliens to seek similarly frivolous appeals. Does anyone know how many more immigration proceedings will be stalled while aliens seek reviews of exclusion orders just so they can remain in the United States longer?

And, fourth, H.R. 1510 provides for judicial review in the Court of Appeals for every asylum case decided by the U.S. Immigration Board. This appeal of right will cause more delays and confusion in the asylum system, without any guarantee of better decision making at the hearing level. Combined with the proposed stay of exclusion, every alien will have a tremendous incentive to appeal to the Circuit Court.

These differences from the Senate bill sacrifice speed and fairness for procedural safeguards of questionable value. The Senate bill provides as much protection for the alien applicant for benefits without providing as many loopholes for exploitation by lawyers intent on securing a little more time in the United States for ineligible clients.

We believe that the Senate bill has provided a correct balance between the need for swift adjudication of status and benefit questions and the desire of the alien for due process rights in immigration proceedings. The Subcommittee should ask all the critics of the Senate structure this question: how many new immigration judges will be needed to have prompt decisions should the Congress accede to their demands for ever more procedures?

We urge the Subcommittee to amend the adjudications proposals in H.R. 1510 to match those in the Senate bill, S. 529. Pressures for the grant of immigration benefits are rapidly rising, while our adjudications system is almost paralyzed through overwork. The proposals in this bill offer a chance for a generous, though controlled, expansion of the rights of aliens in immigration benefit hearings.

There should be some penalty for aliens who request voluntary departure and then don't leave the United States.

We suggest a further point which the Subcommittee should place into H.R. 1510. The INS is faced with an increasing number of aliens who request "voluntary departure" after a deportation hearing (section 244(e) of the INA; 8 U.S.C. 1254(e)) and then don't leave the United States.

There is at present no significant penalty for an alien who does not depart under a voluntary departure order. Often aliens who failed to depart will receive adjustment of status to permanent residence based on equities

built up after their failure to depart. We suggest that section 212(a)(17) and 245(c) be amended to provide, respectively, that an alien who has failed, without authorization, to depart voluntarily on time be excludable and ineligible for adjustment of status.

Non-immigrants should be required to have a non-refundable, round-trip ticket.

Many, perhaps most, enhancements of immigration law enforcement will require the expenditure of additional funds. These are excellent investments. Let me now turn to an enforcement technique which will save Treasury funds, or free existing funds for more beneficial purposes.

I am referring to an idea first suggested by David North in his report to the Select Commission, "Enforcing the Immigration Law: A Review of the Option." He made a very basic, very simple suggestion: that all non-immigrants arriving by air (except diplomats and fiancées) must bear with them non-refundable round-trip airline tickets. No legitimate non-immigrant would be injured by this, because that person has already sworn to the U. S. government that he plans to return home. Further, there appears to be no need for a change in the statute, as INS has the power, in the inspection process, to make this requirement.

The principal advantage of this plan is that it will save INS "alien travel" funds. When illegal aliens are located within this country (from nations other than Canada or Mexico), INS usually has to pay for the airline trip home. If some substantial portion of the non-immigrants apprehended carried these tickets with them, it would save INS a considerable portion of the more than \$20 million a year it now spends for this purpose. Frankly, it would make more sense to spend some part of this money on repatriating Mexican nationals to the interior -- we can send scores of Mexican nationals back to the interior for the cost of flying, for example, a single Argentinian back to Buenos Aires.

#### CONCLUSION

We thank the Chairman and the Members of this Subcommittee for their diligent effort in bringing immigration reform legislation to the House. We hope that the Senate will act, as it did last year, to pass good immigration reform legislation by an overwhelming vote. The Senate did its part last year in providing immigration reform legislation. Now it is time for the House to act swiftly to demonstrate its leadership on the issue again this year.

Mr. MAZZOLI. We now move according to our schedule to Mr. McMahon of the Environmental Fund.

Mr. McMAHON. Mr. Chairman and members of the committee, I am Tom McMahon, executive director of the Environmental Fund, Washington, D.C. I would like to express my thanks to the committee for this opportunity to submit testimony on the immigration reform and control bill of 1983, H.R. 1510.

The Environmental Fund was established 10 years ago and has grown to become a foundation with membership throughout the United States. The Environmental Fund's mission is to study the impact of U.S. population size and growth on our national resource base, environment, and economy.

First, we are in complete agreement that employer sanctions are the best means for getting control over illegal immigration. However, I am concerned that the language describing enforcement is rather weak and should be strengthened. I also urge the subcommittee to take into account the need for additional budgetary support for law enforcement agencies who will be assigned to implement employer sanctions.

The fund believes that the ceiling on legal immigration should be restored to the House version of the bill. I refer you to chart 1, [exhibit 1] which shows the impact of immigration on the current growth of the U.S. population. In 1980 the United States had 226 million people. By the year 2000, if current trends continue, the U.S. population will grow to 279 million and this population will continue to grow, that is the top line, to 336 million by the year 2030.

If the Simpson-Mazzoli bill were to be enacted with an annual ceiling of 425,000 we calculate that the population would grow to 291 million by the year 2030. We believe that the numbers cited in the Senate version should be reviewed periodically every 2 to 4 years and that the ceiling be reset on the basis of a system to evaluate the adequacy of U.S. resources of agriculture, forest land, water, minerals, and others required to support our populace. This periodic review and the resettling of the ceiling should include an assessment of U.S. labor force and military manpower needs in relation to our demographic trends and projections.

Third, the fund believes that the amnesty provision as written in the bill is too sweeping and unworkable. By granting amnesty the U.S. Government sets a precedent that suggests future pardons will be granted. Just the prospect of amnesty will encourage foreign nationals to come here in ever-increasing numbers. It will also give the impression that those who violate our laws are rewarded while hundreds of thousands of law-abiding citizens of foreign countries who dutifully await legal admission to the United States under the quota system are penalized.

I worked in Mexico for 2 years some years ago, and every morning there are huge lines surrounding the U.S. Embassy in Mexico City waiting to get on the list. Friends of mine have come up to me and said: "Why is it my relatives, who have a right to come to the United States, have to wait 5 years when other people will just



enter illegally?" The message that we are giving to the developing world is that we reward lawbreakers and not people who follow our laws.

Legalization, it must be remembered, is an irreversible action. Since there is no turning back, great care should be taken regarding a grant of amnesty.

A major concern at the environmental fund, and I believe Representative Daub touched on during his statement before the subcommittee, is the rise in future legal immigration levels likely to result from this legalization program. The critical concern is how many additional immigrants will be admitted in the future because they have a relative who benefited under the legalization program. The question gets to the multiplier effect engendered by chain migration. Information submitted by the State Department to the Senate Immigration Subcommittee indicates that in 1993, assuming adoption of legalization, 336,000 people will enter in family reunification categories not subject to annual numerical limitations. When added to the preference ceiling of 270,000 and annual refugee flows of 50,000 to 100,000, legal immigration will likely exceed 700,000 in 1993. It should be noted that the State Department assumed a 5-percent annual increase in categories not subject to annual limitation, a rate which State concedes is a minimum rate and possibly conservative. Over time, it is clear that millions of additional legal admissions will result from legalization and a chain migration effect. Where will the jobs come from for these immigrants?

I would like to spend the remaining time and address the push factors that motivate foreign nationals to come to the United States. The unprecedented increase in illegal immigration during the past decade has created a situation where net immigration will soon become, if it is not already, the dominant factor in U.S. population growth. A worldwide study of human needs and satisfactions conducted by the Gallup Organization International several years ago uncovered a startling fact. More than one out of four Latin Americans said they would like to emigrate from their country of birth and come and live permanently in the United States. Chart 2 [exhibit 2], in 1980 the combined population of Mexico, Central America, and the islands of the Caribbean totaled 123 million, the top line. In 31 years, that population will double, and this is taking into consideration the fact that these countries have all established population policies and have birth-control programs. And if those trends continue, by the year 2030, 325 million people will be living in Mexico, the Caribbean islands, and Central America.

Mr. MAZZOLI. Mr. McMahon, you have about another minute?

Mr. McMAHON. Yes; my final chart [exhibit 3] has a list of push factors that are affecting the Mexico population. Mexico suffered a net loss last year of 400,000 jobs, not a gain in jobs, which means that about 1.2 million people went on the unemployment rolls last year. It experienced 100-percent inflation, negative economic growth, a foreign debt of \$83 billion, 40-percent unemployment, and underemployment, and wages so low that \$1 earned in Mexico for a job would earn \$15 in the United States.

Having recited this litany of needs, is it any wonder that millions of Mexicans, Central Americans, and islanders from the Caribbean seek work in our country illegally? We must secure our borders

and limit immigration to a level that insures we will not have to destroy our own resources that have become the breadbasket of the world. We need a strong and adequate immigration law this year. The American people want this. I would hope that Congress would pass this legislation posthaste.

Thank you.

Mr. MAZZOLI. Thank you very much, Mr. McMahon.

[The complete statement and exhibits follow:]



## THE ENVIRONMENTAL FUND

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TESTIMONY OF MR. THOMAS F. MCMAHON  
 EXECUTIVE DIRECTOR  
 THE ENVIRONMENTAL FUND (TEF)  
 BEFORE THE  
 SUBCOMMITTEE ON IMMIGRATION, REFUGEES  
 & INTERNATIONAL LAW  
 HOUSE COMMITTEE ON THE JUDICIARY  
 U.S. HOUSE OF REPRESENTATIVES  
 WASHINGTON, D.C.  
 MARCH 14, 1983

I am Tom McMahon, Executive Director of The Environmental Fund, Washington, D.C. I would like to express my thanks to the Committee for this opportunity to submit testimony on The Immigration Reform and Control Bill of 1983, H.R. 1510.

The Environmental Fund was established ten years ago and has grown to become a public foundation with membership throughout the U.S. The Environmental Fund's mission is to study the impact of U.S. population size and growth on our natural resource base, environment and economy. We are unique among population and environmental organizations because our work is focussed on one objective - the establishment of an effective U.S. population policy that will keep the numbers of people in our country in

balance with our natural resources base and our environment. We alert government and the private sector to the causes of population growth and warn them of the consequences that uncontrolled growth will have on the quality of life in America.

#### THE IMPORTANCE OF IMMIGRATION REFORM

Right now, we focus on immigration because our studies show that it is a major determinant of the size of America's population in the future. If current fertility and mortality trends continue, by the year 2025 all U.S. population growth will result from post 1980 immigrants and their descendants.

TEF computer projections indicate that the 1980 U.S. population of 226 million will grow to 279 million by the turn of the century and to 336 million by the year 2030 assuming a net annual immigration level of 1.2 million. In our view this is an approximation of the current situation. If net annual immigration were reduced to 500,000, the population of the U.S. will be 263 million by the year 2000 and 291 million by the year 2030. This approximates what we believe will occur if this bill is enacted into law with a ceiling and is effectively enforced. (see appendix, table 1 & explanatory notes) Clearly the failure to adopt this measure will add at least an additional 16 million people to our population by the year 2000 and another 45 million people by the year 2030. An examination of this data shows, that given constant fertility and mortality, immigration becomes an increasing proportion of our growth. For example if Congress fails to act on this issue, 65% of our growth will be



due to immigration in the year 2000 and 100% by the year 2025. (appendix, table 2)

Given today's unprecedented federal budget deficits and persistently high unemployment one cannot ignore the question: To what extent do undocumented aliens take jobs away from U.S. residents in the labor force, and how much does this cost the U.S. taxpayer? If we assume that there are four million illegal aliens working in the U.S. and 30% of them currently displace legal residents then this results in 1.2 million Americans being out of work. TEF calculates that this costs the taxpayer \$8.4 billion in annual transfer payments. (For a more detailed explanation and analysis see appendix, table 3.)

It is clear from our calculations and projections that comprehensive reform of U.S. immigration law is long overdue. We commend the Committee's initiative for introducing this Bill and for conducting these hearings early in the 98th Congress.

#### PROBLEMS CONNECTED WITH IMMIGRATION REFORM LEGISLATION

Since its founding The Environmental Fund has devoted considerable effort to the study of the problems associated with U.S. immigration. Recently we have enhanced our analytic capabilities by developing the QUIC DATA computer program. TEF firmly believes that the most important action that Congress should take is to enact effective legislation that will control illegal immigration. In this regard we concur with the Subcommittee's judgement that employer sanctions are the best way to remove the attraction of employment in the U.S. that has motivated millions of workers to come here illegally. Since the

determination of a job-seeker's eligibility is essential for the successful implementation of employer sanctions, we strongly urge that Congress insure that a sound, fraud resistant worker verification system be implemented. In our view Congress should carefully consider a call-in verification system based on the Social Security number. While this system would entail considerable start-up costs, these would be offset by savings to the U.S. Treasury resulting from reduced job displacement and lower transfer payments.

In keeping with our historical tradition of welcoming immigrants, the current Senate and the original House version of the bill sets a ceiling for annual admissions that provides for the resettlement of more legal immigrants for permanent residency in the United States than the rest of the nations of the world combined. When refugee admissions are added to this ceiling, well over one-half million enter annually. TEF believes this number is too high for a variety of reasons. First, the ceiling number was chosen, not on the basis of need or ability of our nation to assimilate added millions, but on criteria that no longer have relevancy to the economic realities of the U.S. today.

We think it wise that the ceiling be reviewed and adjusted periodically, perhaps every two or three years. When this reexamination is undertaken by the legislative and executive branches of government for the first time we, strongly admonish these bodies to set up a system to derive these immigration ceilings from an evaluation of the adequacy of the United States' resources of agricultural and forest land, water, minerals, and

others required to support its populace. In addition this periodic review should include an assessment of the U.S. labor force and military manpower needs and a study of demographic trends and projections.

TEF believes that amnesty written into this bill is too sweeping and unworkable. By granting amnesty, the U.S. Government sets a precedent that suggests that future pardons will be granted. Just the prospect of amnesty will encourage foreign nationals to come here in ever increasing numbers. It will also give the impression that those who violate our laws are rewarded while hundreds of thousands of law-abiding citizens of foreign countries who dutifully await legal admission to the U.S. under the quota system are penalized. Amnesty will also provide profiteers who traffic in fraudulent documents a bonanza as increased numbers of foreign nationals, encouraged by amnesty, take the risk and enter the U.S. illegally.

Amnesty, or legalization, will, of course, entail other risks and problems. Mindful of the case-by-case INS review process necessary to consider an applicant's claim to legalization, significant administrative burdens could result under this program, particularly if the number of aliens coming forward is greater than expected. There are indications that enormous federal costs could result from this legalization, while states and localities, concerned about the non-federal fiscal impact of amnesty are seeking 100% federal reimbursement of these costs.

Legalization, it must be remembered, is an irreversible action. Since there is no turning back, great care should be

taken regarding a grant of amnesty. A major concern at TEF, and I believe Representative Daub (R-NE) touched on this during his statement before this Subcommittee is the rise in future legal immigration levels likely to result from this legalization program.

The critical concern is: how many additional immigrants will be admitted in the future because they have a relative who benefited under the legalization program? This question gets to the multiplier effect engendered by chain migration. Information submitted by the State Department to the Senate Immigration Subcommittee indicates that in 1993, assuming adoption of legalization, 336,000 people will enter in family reunification categories not subject to annual numerical limitations. When added to the preference system ceiling of 270,000, and annual refugee flows of 50,000 to 100,000, legal immigration will likely exceed 700,000 in that year alone. It should be noted that the State Department assumed a 5% annual increase in categories not subject to annual limitation, a rate which State concedes "is a minimum rate (and possibly conservative)." Over time, let's say, the next 20 years, it is clear that millions of additional legal admissions will result from legalization and the chain effect. Where will the jobs for these immigrants come from?

I bring up this point, Mr. Chairman, because one of the original elements of this carefully crafted reform measure, a total ceiling on legal immigration of 425,000, is not now part of the bill. In light of these concerns, I would urge your Subcommittee to seriously weigh the wisdom of amnesty,



particularly as it impacts legal immigration in the absence of a comprehensive ceiling.

To allow illegal aliens who have truly established themselves in America a chance to become citizens, TEF believes that moving the registry date from 1948 to 1974 is sufficient.

#### U.S. CANNOT SOLVE THE "PUSH" FACTORS

Some legislators, individuals and organizations have criticized this bill for failing to recognize and address the "push" factors of overpopulation, unemployment and poverty that motivate people in less developed countries to immigrate illegally. However noble the ideals of these critics we submit that it is unrealistic to think that the U.S. can begin to solve problems of this magnitude during the next two decades. Therefore we would urge the committee to follow its current course and continue to keep consideration of these matters out of the bill since passage as soon as possible is urgent.

The Environmental Fund has compiled population , labor force and new job requirements data for the world's less developed countries. Based on these statistics we have run computer projections that indicate the staggering magnitude of the "push" factors.

The 1980 combined population of the LDC's was 2.3 billion and will grow to 3.6 billion by the year 2000 and to 5.6 billion by 2030. (appendix, table 4) These numbers are based on U.N. statistics that take into account an optimistic assessment of reduced fertility in the future. The labor force of the LDC's in 1980 stood at 843 million. By the year 2000 this number will

nearly double to 1.43 billion and will more than triple by the year 2030, reaching 2.56 billion. (appendix, table 5) In 1980 annual new job requirements for the LDC's stood at 22.7 million. By the year 2000, 37.5 million new jobs will be required annually to satisfy the demand for employment. This number will rise to 41.4 million annually by 2010. Only then will the annual number of new job requirements begin to decline and reach 28 million by the year 2030. (appendix, table 6)

#### A CLOSER LOOK AT MEXICO

It is impossible to foresee the impact these staggering numbers represent for the future of our relations with the LDC's. But since Mexico, sends the most immigrants to the U.S., it deserves closer scrutiny. I believe that I can speak to this subject with some authority since I have spent the greater part of my career working with development projects in Latin America and Mexico. For example, I lived with the Indians in the highlands of Guatemala and spent three years as the Director of Audiovisual Production for the Colombian Institute of Social Development, a research and development institute in Bogota. I also served for five years with USAID and spent two and a half years as the USAID Population Officer, San Jose, Costa Rica.

I recently worked for two years in Mexico in collaboration with the Director of the Mexican Government's population program. Since I know this program first hand I thought it might be useful to summarize the carefully researched data which the Mexicans approved for a film I produced entitled, "Mexico - The Year

2000." This film was reviewed at the highest levels of government so its contents represent the official views of the Lopez Portillo Government. Looking at a country through the eyes of its own people is a good way to understand how they react to the world around them. This film has been shown throughout Mexico on television, in commercial movie theaters and in many rural areas.

Basically, three forces combine to make up the "push" factors that motivate Mexicans to seek work in the United States. The first is the pressure of overpopulation that has created massive migration to Mexico's cities and to the U.S. At the turn of the 20th century Mexico had 14 million people. By 1960 it had more than doubled to 36 million. By 1980 the number had risen to 70 million. Taking into account the optimistic fertility decline predicted by the Government, Mexico will count 116 million by the year 2000 and 185 million by 2030. (appendix, table 7) In 1980 the Mexican labor force counted 20.3 million workers. About 40% of it was unemployed or underemployed. By the year 2000 the labor force will have grown by 77% to 35.9 million. By the year 2030 the total number of Mexicans in the labor force will be 65.6 million. (appendix, table 8) TEF calculates that the annual new job requirements in 1980 was 651,730. By the year 2000 the annual number of jobs required will be 969,040 and by the year 2030 that number will have risen to 1,066,540. (appendix, table 9)

Mexico exported grain in significant quantities before 1970, since that time it has become a net importer of all the basic foodstuffs: corn for tortillas, wheat for bread, beans and rice

as well as soybeans for cooking oil. During a period when Mexico's agricultural production grew by only 15% the demand for these products grew by 50%. In short without huge imports Mexico cannot feed its people.

Mexico has discovered a treasure that surpasses even its wildest hopes. But the new petroleum and natural gas industry cannot create the many new jobs needed to solve the unemployment problem> There was a time when Mexico thought that mechanized agriculture was the answer, but again agribusiness does not create jobs it eliminates them. In 1978 it cost the equivalent of \$8,000 U.S. to create an agricultural job. Today the cost is much higher.

Mexico calculates that it must build 500,000 new houses annually to take care of the growing population that is filling its cities to overflowing. The cost for this was one hundred billion pesos annually in 1978 and has risen much higher today. The task of providing the minimum education for Mexico's growing numbers of young people is staggering. We can get some idea of the proportions of the problem when we realize that half of Mexico's people are children and teenagers below 16 years of age.

Today we read that Mexico's foreign debt totals \$80 billion. Approximately \$30 billion of this amount is owed to U.S. banks. Since the recent drop in the price of oil there is little hope that Mexico will be able to meet its obligations. In 1980, a very good year, Mexico created just about enough jobs to take care of the people entering the job market. That means that the unemployment rate did not rise that year. During the past 12



months the Mexican economy lost 400,000 jobs which is a staggering blow to those who seek employment. In actual fact Mexico's unemployment grew by more than one million last year.

#### WORLD'S PROBLEM TOO HUGE FOR U.S. TO SOLVE

At a time when our own country is struggling to provide emergency jobs for Americans, I believe that we must be realistic and understand that there is very little that we can do to change the pressures that create the "push" factors in the LDC's, at least during the next ten to fifteen years. Remember that all the young people who will be looking for jobs by the year 2000 have already been born. Many of them will be ill suited to work because they are being deprived of adequate diet and education.

Charity is one of the finest American character traits but it should first be practiced at home. Our primary obligation is to protect our nation's standard of living by preserving our own natural resources and environment. If the U.S. is forced to provide for more and more people the American dream will suffer immeasurably.

I hope that the information we have provided will move the House to pass this bill in the next few months. ###

## APPENDIX

TABLE 1: U.S. Population Projections

TABLE 2: Proportion of U.S. Population Growth Due to Immigration

TABLE 3: The Costs and Numbers of U.S. Unemployed  
Due to Illegal Immigration

TABLE 4: Population Projection for Developing Countries

TABLE 5: Labor Force Projection for Developing Countries

TABLE 6: Annual New Job Requirements for Developing Countries

TABLE 7: Population Projection for Mexico

TABLE 8: Labor Force Projection for Mexico

TABLE 9: Annual New Job Requirements for Mexico

(appendix  
MAINTAINED in Subr.  
files)

Mr. MAZZOLI. Miss Baker, welcome, and you are recognized for 5 minutes.

Ms. BAKER. Mr. Chairman, members of the subcommittee, thank you for the opportunity to testify today, and thank you, Mr. Chairman, for your leadership and dedication in designing and progressing with this important legislation. I will submit my full testimony for the record and will be very brief in my comments.

Mr. MAZZOLI. All the testimony will be made a part of the record.

Ms. BAKER. Zero Population Growth, Inc. (ZPG), is a nonprofit membership organization which was founded 15 years ago to promote population stabilization in the United States and across the world, as a requisite for all human beings to attain a decent quality of life. Our interest in immigration policy relates to the significant role that immigration plays in U.S. population growth. Current estimates indicate that 40 to 50 percent of our Nation's annual growth is attributable to immigration.

Ms. BAKER. If current fertility levels hold, by 2030 all growth in U.S. population will result from immigration. At this rate we are adding another California to our population each decade, and a new Washington, D.C., every year.

Resource constraints, caused in part by population growth, have contributed significantly to economic inflation, stagnation, recession, and depression.

In 1980, the world's population grew at a rate six times that of the world's food production for the same year. Numerous environmental problems are caused at least in part by population pressures: air and water pollution, ground water degradation, habitat destruction, species extinction, and deforestation, to name just a few.

To address these problems, in 1974 the United States joined 136 other countries in endorsing a world population plan of action calling on all nations to establish population policies. Now, on the eve of the followup 1984 U.N. World Population Conference, the United States still has not adopted its own population policy.

Mr. Chairman, the legislation that is before us today is one step in the right direction. For the most part we support H.R. 1510 and have the following six comments to make.

First, immigration should be addressed as part of an overall population policy. We encourage the subcommittee to add language to H.R. 1510, stating that an effective immigration policy is an essential element in achieving population stabilization. Also, we urge the subcommittee to amend the bill by adding a provision that requires the President to report annually to the Committees on the Judiciary of the House of Representatives and the Senate, on the numbers admitted legally during the preceding year and their impact on the growth rate and future size of the United States.

Second, we support an annual cap of no more than 425,000 legal immigration. We strongly recommend that the subcommittee restore such a provision to the bill. Considering that there could be added some 75,000 refugees, and not considering any illegal immigrants, annual immigration would then total about 500,000. We have appended as exhibit A a table of population projections for the United States for the years 2000 through 2080. It can be seen

that admitting 1 million immigrants each year, which is today's estimated total, (including illegal aliens) there is no peak in sight. In 2080 our population will have reached 340.1 million and will still be rising.

Third, we support employer sanctions and a system for worker verification. To be effective, these systems must be integrated with each other and must have sufficient funding and resources. We urge the subcommittee to amend the bill with language that protects the civil rights of legal immigrants and citizens alike, and penalizes discrimination and any abuse of the worker's eligibility system.

Fourth, we support legalization for aliens illegally present in the United States who entered prior to the dates stated for this purpose in the bill. Certainly, we feel that it is wiser and more humane to integrate these individuals into the society, than even to consider mass deportation. We believe, however, that legalization must be accompanied by strict measures to curb future illegal immigration.

Fifth, we support the provision of adequate funding to enable the Immigration and Naturalization Service to implement the very reforms provided in this legislation. This must be a crucial aspect of any comprehensive legislation, if it is to be effective. The INS is chronically underfunded and understaffed. More training, more personnel, and a changeover to computerization are very much needed.

And finally, we oppose the expansion of the current H-2 guest worker program, believing that it would enable an employer to sidestep sanctions by hiring temporary foreign labor through the H-2 program. Such a practice would undermine the employer sanctions system.

In closing, I want to reaffirm ZPG's belief that continued immigration is a benefit to this country, bringing us cultural diversity and unique strengths. ZPG believes that a balance can be struck that provides for both immigration and limits to growth.

Mr. Chairman, we are grateful for the opportunity to work with you on H.R. 1510, legislation that is vital to our country's present and future well-being. We will welcome any further opportunities to assist this panel in its deliberations, and we urge prompt passage of comprehensive legislation to reform our Nation's immigration policy.

[The complete statement follows:]





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#### Testimony of Carole L. Baker

Executive Director of Zero Population Growth, Inc.

Before the United States House of Representatives

Subcommittee on Immigration, Refugees and International Law

On H.R. 1510, The Immigration Reform and Control Act of 1983

March 14, 1983



1346 Connecticut Ave., NW Washington, DC 20036 (202) 785-0100

Mr. Chairman, Members of the Subcommittee: Thank you for this opportunity to testify today on the Immigration Reform and Control Act of 1983, H.R. 1510. On behalf of Zero Population Growth, I also want to thank you, Mr. Chairman, for your leadership and dedication in designing and progressing with this important legislation.

Zero Population Growth, Inc. (ZPG) is a non-profit membership organization which was founded fifteen years ago. Our objective is to mobilize broad public support for population stabilization in the United States and worldwide, as a requisite for all human beings to attain a decent quality of life. (Stabilization is the attainment of a balance in which births plus immigration equal deaths plus emigration.) Our interest in immigration policy relates to the role that immigration plays in U.S. population growth. Current estimates indicate that 40 to 50 percent of our nation's annual growth is attributable to immigrants.

Our nation's environmental and resource problems--such as the increasing loss of topsoil and prime farmland; the proliferation of toxic wastes; water and air pollution; acid rain; habitat destruction and species extinction; deforestation and desertification with resulting climatic changes--are all caused at least in part by population growth. It is sobering to realize that, although Americans

comprise only five percent of the world's population, per capita they use eleven times the world average of energy, six times the steel and four times the grain.

As the world's fourth most populous nation, the United States expanded its population in 1980 by 2.3 million people, not including illegal immigrants. At the 1980 growth rate of 1.02 percent, the U.S. experienced the second greatest population growth of any developed nation. We Americans now number over 232 million. For every three of us today, there will be four by the year 2000. At this rate of growth, the U.S. is adding another California to its population each decade, and a new Washington, D.C. every year. In fact, in less than three years since April 1980, six million more people have joined our population, which is the equivalent of adding another state to the union.

Natural increase (the excess of births over deaths) and net immigration (immigration minus emigration) account for that 2.3 million increase. Although each American woman is bearing, on the average, fewer children than women did in the past, the total number of babies born annually is still on the rise. The women born during the "baby boom" generation, who are now in or are entering their childbearing years, contribute substantially: in 1980, 3.6 million babies were born--an increase of 4% over the year before. The 1980 U.S. fertility rate reached 1.875, the highest since 1974. Demographers project a

continuing increase in the numbers of babies born each year, reaching a level of four million annually before tapering off towards the end of this decade.

If current fertility levels hold, by 2030 all growth in population will result from immigration. The flow of immigrants to the U.S. is approaching record levels. Immigration rose dramatically in the decade of the '70's and may once again climb as high as in the first decade of this century, when about nine million people entered the country. High levels are expected to continue and even to accelerate, due in large part to population growth and consequent troubles in the source countries. According to the "push-pull" theory, immigrants will be pushed from their homelands by overpopulation, resource depletion, unemployment and political instability, and will be pulled into this country by job prospects and an ever-widening divergence in the per capita incomes of the United States and the source countries.

The present U.S. population has tripled since the turn of the century. Today, U.S. local governments are experiencing grave difficulties in trying to cope with the sudden influx of immigrants, who intensify competition for unskilled jobs, crowd into low-cost housing and place unplanned-for demands on educational and welfare programs. It is just as necessary to recognize that the lack of planning leads to inequities and other hardships for the immigrants. Clearly, industrialized countries are not immune to the impacts of increased



population. Resource constraints, caused in part by population growth, have contributed significantly to economic inflation, stagnation, recession and depression. The Japanese, for example, have experienced a rapid rise in per capita income, approaching Western European levels, and yet they cannot attain the Western European quality of life because of overcrowding, lack of living space and a scarcity of natural recreation areas.

The concept that the problems of population growth, resource depletion and environmental degradation are something we must deal with solely in the future is a myth. These problems are upon us. The 1980 National Agricultural Lands Study found that population growth and shifts are major factors in the annual loss of three million acres of U.S. agricultural land. Furthermore, U.S. farmers attracted by the world grain market have adopted practices that resulted in the erosion of four to five billion tons of topsoil in 1982 alone. At the same time that these losses have been occurring, the demand for United States agricultural products is rising steadily due to worldwide population growth and increased per capita consumption. Demand for U.S. farm products may increase by 85% by the end of the century. For instance, in 1980, the world's population grew at a rate six times that of the world's food production for the same year. This means that, although food stocks increased, less food is available per capita, at a time when over 600 million human beings are severely malnourished. In the meantime, parts of our nation are running out of

safe and sufficient ground water supplies, soil erosion is worsening, and desertification is ruining several regions of this country.

Population stabilization is one of the necessary tools to address these problems and to assure better living conditions for all people. Stabilizing the population and reaching zero population growth will help us solve the many crucial and complex economic, resource, and political problems confronting us. It was former Secretary of Defense and President of the World Bank, Robert S. McNamara, who cited overpopulation as the gravest threat to human life, next to nuclear war. The 1970-72 Presidential Population Commission concluded, "... we have found no convincing argument for continued national population growth." In 1974, the then Governor of California, Ronald Reagan, stated, "Our country has a special obligation to work toward the stabilization of our own population so as to credibly lead other parts of the world toward population stabilization." Furthermore, the industrialized countries, recently concluding the Ottawa Summit on global economic conditions, agreed in their Summit Declaration that they "are deeply concerned about the implications of world population growth. . .and will place greater emphasis on international efforts in these areas."

In spite of such pronouncements, the U.S. still has no national population policy and no specific demographic goals, and, indeed, no overall program to help ease population pressures in other countries.

It is pertinent to note that next year marks the tenth anniversary of the United Nations World Population Conference in Bucharest. At the 1974 conference, the United States joined 136 other countries in endorsing a World Population Plan of Action. One recommendation of the Plan is that,

"Population measures and programmes should be integrated into comprehensive social and economic plans and programmes and this integration should be reflected in the goals, instrumentalities and organizations for planning within the countries. In general, it is suggested that a unit dealing with population aspects be created and placed at a high level of the national administrative structure and that such a unit be staffed with qualified persons from the relevant disciplines."

Although our nation is preparing to participate in the 1984 conference, we still have no articulated policy for national population growth and change.

If we are to deal with U.S. immigration policy over the long term as well as in the short run, we must address the circumstances that cause people to migrate from their native lands. Our nation's immigration goals and limits should be linked to a strong, comprehensive, cooperative international program in which more U.S. financial and technical assistance is directed to help other countries carry out family planning programs, create jobs and promote economic opportunities and stability, and defuse political tension and avert military conflict. Efforts such as these could lead to a notable drop in the numbers of immigrants entering the U.S. However, a serious commitment needs to

be made, to alter the fact that, among the developed nations, only Austria and Italy provide a smaller share of their GNP for foreign aid than the United States.

Meanwhile, there is legislation at hand to address today's problems. For the most part, ZPG supports H.R. 1510. Our comments specific to the bill are as follows:

- o Immigration should be addressed as part of an overall population policy: There is sufficient precedent to conclude that the Congress would agree that population stabilization is in the national interest. Therefore, we encourage the Subcommittee to add language to H.R. 1510, stating that an effective immigration policy is an essential element in achieving population stabilization. Also, we urge the Subcommittee to amend the bill by adding a provision that requires the President to report annually to the Committees on the Judiciary of the House of Representatives and the Senate, on the numbers admitted legally during the preceding year and their impact on the growth rate and future size of the United States.
- o We support an annual cap of no more than 425,000 legal immigration. We strongly recommend that the Subcommittee restore such a provision to the bill. Considering that there could be added some 75,000 refugees, and not considering any illegal immigrants, annual immigration would then total about 500,000. To illustrate



the numerical results of admitting that same total every year, we have appended as Exhibit A a table of population projections for the United States for the years 2000 through 2080. The projections, which have been provided by the Population Reference Bureau, contrast the annual net immigration totals of 0, 0.5, 1.0 and 1.5 million people.

It can be seen that, even with no immigration at all, population would continue to rise until about 2020, when it would reach 266.5 million and then begin its downward trend toward stabilization. At 0.5, population would peak in 2040, at 294.7 million. With one million immigrants, which is today's estimated total (including illegal aliens), there is no peak in sight. In 2080, the U.S. population will have reached 340.1 million and will still be rising. While there is no agreed-upon desirable population level for stabilization, some believe that the U.S. has already surpassed a sustainable level. Because our current numbers are straining available resources, we need to reach stabilization at the lowest possible level, while a range of options still remains.

- o We support employer sanctions and a system for worker verification.

To be effective, these systems must be integrated with each other and must have sufficient funding and resources, since failures of sanctions programs in other countries resulted principally from lack of resources and political commitment. In addition, we urge

the Subcommittee to amend the bill with language that protects the civil rights of legal immigrants and citizens alike, and penalizes discrimination and any abuse of the worker's eligibility system. This means, in part, that the sanctions program must be accompanied by appropriate oversight, reporting and review. We believe a system can be devised that would significantly minimize the potential for discrimination.

- o We support legalization for aliens illegally present in the United States, who entered prior to the dates stated for this purpose in the bill. Certainly, we feel that it is wiser and more humane to integrate these individuals into the society, than even to consider mass deportation. We believe, however, that legalization must be accompanied by strict measures to curb future illegal immigration.
- o We support the provision of adequate funding to enable the Immigration and Naturalization Service to implement the very reforms provided in this legislation. This must be a crucial aspect of any comprehensive legislation, if it is to be effective. The INS is chronically under funded and under staffed. More training, more personnel and a change-over to computerization are very much needed. If funding for the INS is not substantially increased, the agency might be forced to take existing staff away from routine work and to reassign them to the new program, with no assurance that implementation would be effective.

- o We oppose the expansion of the current H-2 guest worker program.

It appears that an employer could sidestep sanctions by hiring temporary foreign labor through the H-2 program. Such a practice would undermine the employer sanctions system.

In closing, I want to reaffirm ZPG's belief that continued immigration is a benefit to this country, bringing us cultural diversity and unique strengths. ZPG believes that a balance can be struck that provides for both immigration and limits to growth.

Mr. Chairman, we are grateful for the opportunity to work with you on H.R. 1510, legislation that is vital to our country's present and future well-being. We will welcome any further opportunities to assist this panel in its deliberations, and we urge prompt passage of comprehensive legislation to reform our nation's immigration policy.

Exhibit A

## PROJECTED

TOTAL U.S. POPULATION, YEARS 2000 - 2080,  
BY ANNUAL NET IMMIGRATION (in millions) (\*)

Annual Net Immigration (in millions)	Years				
	2000	2020	2040	2060	2080
0.0	255.9	266.5	256.4	235.9	214.9
0.5	267.4	291.5	294.7	286.6	277.0
1.0	279.1	316.9	333.8	338.2	340.1
1.5	290.9	342.4	373.0	390.0	403.4

(\*) Provided by Demographic Information Services Center (DISC) of the Population Reference Bureau, 1337 Connecticut Avenue, N.W., Washington, D.C. 20036 (telephone: 202-785-4664).



Mr. MAZZOLI. Let me commend the whole panel; it is not easy to take what amounts in each case to pretty much of a 2- to 4-year effort, to summarize it into 5 minutes.

Let me yield myself 5 minutes and start the questions. I will start with Mr. McMAHON.

If we were sitting here in 1910 or 1920, and we were in this room with these charts talking about immigration and population figures and resource capabilities, do you think the conclusion of the environmental fund would be that we better put a cap on things because if we do not we are not going to have resources to take care of the people?

Mr. McMAHON. Definitely not then. In the last 20 years we have gone through a revolution in this country. We never had in the earlier part of this century the type of environmental degradation that we have today. Every problem that we have with pollution, with solid waste problems, is attributable to the fact that our population has grown so large during this century. There comes a time when every country becomes a mature nation, and I think we have reached that point. The Europeans reached it several centuries ago, and their birth rates have leveled off so that they virtually have reached zero population growth. In some cases their populations are dwindling. We know that in the past they have imported workers, and now are trying to export these workers, because they no longer need them. The future will have automation in the workplace. We are doing a study right now, which I would like to bring to your attention—what the job situation will look like toward the end of this decade. It does not look good.

Mr. MAZZOLI. I am not a historian. I wish I were, because this subject we are into involves history. I always felt that in every area, every decade, there were people, Jeremiah's some would call them, who would look at the data and make extrapolations and say we will never make it. As recently as 1973 and 1974 we were told that oil and natural gas resources would soon be depleted, and here we are 7 or 8 years later with a glut, in part because more was found and in part because we are conserving. Is there any part of this data that does not work out in that we might find a way to accommodate the people, find more ways to make food or handle the resources better?

Mr. McMAHON. I think that if the bill was passed it would be a real solution to the problem. That's not saying that our population will not grow in the future. But without the Simpson-Mazzoli bill you saw in the chart the differences in the size of our population. I think the bill with a ceiling is an excellent start toward bringing our population growth under control.

Mr. MAZZOLI. Miss Baker, you were talking, too, about the population, which we appreciate very much, because it is a tough, intricate subject. Recently I flew from Washington to the west coast, and probably 99 percent was over what looked like vast open spaces, and maybe 1 percent of that trip was over population centers. Is there any possibility that the Nation could cope with greater growth and more people in a beneficial way?

Ms. BAKER. One of the biggest problems those of us concerned with population growth face is the perception that people have when they fly over this country and see the open land. It really

does make you think, what are we talking about? In fact, much of the open land is agricultural land in one form or another; the balance is land that is not livable and is not arable. We are already, as we continue to grow, consuming our agricultural lands and prime farmlands through urbanization, through building schools and homes and shopping centers and highways. We have not to date found a way to avoid encroachment upon the lands. We need so much to sustain life. That while there is no data that tells us what is a sustainable number in this country, and that is one of the reasons we need a policy and better projections for the future, we know that we are already straining our resources, and that the quality of life is already being impacted upon in many ways in this country.

Mr. MAZZOLI. Thank you very much. My 5 minutes has expired.

I will yield to my friend from Texas for 5 minutes. I will come back to Dr. Graham.

Mr. HALL. Thank you, Mr. Chairman.

Would you place back the chart that he changed on the 100 percent? Chart 3.

I direct this question to Mr. McMahon. Your chart indicates the push factors that exist not only in the United States but in Mexico.

Mr. MCMAHON. That is correct.

Mr. HALL. In your testimony at the bottom of page 3 dealing with employer sanctions in which you indicate your support for employer sanctions and that a sound, fraud-resistant worker verification system should be implemented, and a call-in verification system should also be implemented. If we passed a law that set up very strict employer sanctions, even the Senate passed a provision I think which makes the penalties somewhat different from what we had last year in the Simpson-Mazzoli bill, and if we passed a strict amnesty provision, which you have some question with, as long as these push factors remain with 100 percent inflation in Mexico, a negative economic growth, \$83 billion in foreign debt, 40 percent unemployment and underemployment, 400,000 jobs lost in 1982, and whereas a dollar earned in Mexico would earn \$15 in the United States, do you believe that any employer sanctions measure that we pass and any amnesty provision that we pass is going to in any way diminish the number of people coming to this country?

Because as I see it, as long as those six elements exist, you will continue having people cross the Rio Grande coming into this country because of strictly trying to get a better life. They are going to run the risk, as I see it, regardless of what the law is, regardless of what we may do here, I feel that they are going to continue to come across the border into this country for strictly economic reasons, not to come over here to become citizens of this country, not that that is not the most desirable thing, of course. Am I right or wrong?

Mr. MCMAHON. Well, I think that the main motive for coming to the United States from Mexico right now is to earn a living, because many of these people are living in rural areas and in the crowded cities. I think that you are not right, because if the employer sanctions were made to work properly, and were enforced, it would be impossible for these people to get jobs in this country, so the magnet would be turned off; like a huge electromagnet. When



you turn off the switch, there is no more attraction. But of course they would have to be workable and enforced strictly.

We have thought a lot about this, too. I believe that in the beginning they may be only 70 to 80 percent effective, but over time the message will get back to the sending countries, especially the countries that we mentioned before, Mexico, Central America, and the Caribbean—you cannot get a job in the United States. There is no point going there because you will not be able to make it.

Mr. HALL. If that be true, why has the enforcement of employer sanctions failed in many of the countries where it is on the statute books, as indicated by that GAO report?

Mr. McMAHON. I am not familiar with which countries you are referring to.

Mr. HALL. I cannot call it off the top of my head, but is there not a report which says that in any area where you have had employer sanctions, they have not proved successful?

Mr. McMAHON. Well, I think that if you are talking about the European countries, that is a completely different situation. They have an excellent identification system. Every person, whether he be a resident or a tourist, mostly residents, have to report to the police stations when they change their residence, in most of those countries. They have a pretty good fix on where people live. In Norway they have done away with the census. They have such good data on the population that they do not need it. They know exactly who people are and where they are born. To my knowledge, that is not a correct evaluation of the situation.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida is recognized for 5 minutes.

Mr. HALL. Mr. Chairman, I ask unanimous consent that the subcommittee permit coverage of this hearing in whole or part by television broadcast, radio broadcast, or still photography in accordance with committee rule 5.

Mr. MAZZOLI. Is there objection?

The Chair hears none. So ordered.

Mr. SMITH. Thank you, Mr. Chairman.

I am curious, anyone on the panel, if they will give me some information, and I would like to apologize in case the chairman asked that question. I was not here. You talked about ceilings on immigration, and that that bill right now does not contain any ceilings. I am curious as to what ceilings you are speaking of specifically, what numbers you would like to see as a ceiling, and how you would implement that ceiling in terms of population from country to country or otherwise, and what ceilings have to do with illegal immigration anyway.

Ms. BAKER. We do not see this as an illegal immigration bill. We see this as a comprehensive immigration reform bill. I represent Zero Population Growth. We believe that our net immigration each year should be around 400,000. This means that if we had a limit on legal immigration of 425,000 each year, and this year we have a 75,000 ceiling set on refugees, that would give us about 500,000 gross immigration, netting out to somewhere around 400,000, probably more. We believe that is very important. Our concern is not where the people are coming from. Our concern is strictly one of numbers and how that impacts on growth in this country.

Perhaps the other panelists would like to address that.

Mr. McMAHON. The Environmental Fund believes that the population size in this country is very important for our well-being in the future for our standard of living. We should have periodic review of the ceiling. Of course we would urge the House to reinstate the same ceiling that is in the Senate bill. But we also recommend a periodic review every 2 to 4 years where you could take another look at this ceiling and measure it against our natural resource use and the unemployment situation in the United States. This ceiling could fluctuate according to the well-being of the United States. We feel that is very important, and the Environmental Fund is working with some other committees in the Congress, to introduce foresight legislation which would for the first time allow the United States to begin to measure these kinds of things. Right now, unfortunately, we are the only industrialized country in the free world, that does not have a good system for measuring these kinds of phenomena. I think that we have to take a look at this.

Mr. GRAHAM. Could I address the question briefly, also?

FAIR began thinking about this complex question of what should the ceiling be quite a long time ago. We felt after we looked at the historic data from immigration reform legislation of the twenties, as far as we could tell, about 300,000, perhaps 325,000 was the historic average. That is about as rational as anything else, and that is where we started.

The Huddleston legislation 2 years ago in the Senate started there. But we can live with 425,000, because as the panelists have pointed out, and as this committee knows, the number is very hard to justify, and in the long run it can only be justified by an annual or biannual review of the basic economic, demographic, and resource position of the United States, so I think our organization is one which would regard 425,000 as absolutely the outward bound, but the main issue is periodic review in the light of realities to which this question should be addressed.

Mr. SMITH. You want to set a ceiling on immigration, which I do not necessarily disagree with. The problem is you want us to fill the shoebox with a certain number, but you do not tell us how to create that box, how to shove them in with a shoehorn, how many from where? How many would you take from Southeast Asia, how many people from the Caribbean, how many from traditionally European countries? Give us a little help; 425,000 is a great number, but they are coming from all over the world. Where do we take them from?

I am sitting here as a new member, but I am going to echo what the chairman said the other day, everybody has suggestions, but nobody gives us an answer, and nobody is willing to make a bottom-line adjustment. It is easy to throw us the ball and say we think 425,000 is a great number; 425,000 of whom? How about some concrete answers, concrete proposals from the people that come before this committee?

I can see how the chairman and others on the committee over the years have been frustrated to death because everybody is giving them the reality of how they feel and lip service in terms of problems, but I have not heard one witness yet give one single con-



crete proposal as to how to accomplish any of those things that they are propounding as this great ultimate solution to some of the problems that we are trying to address here. And it must be awfully frustrating. It is to me, and it must be worse when you have been sitting on this problem for a number of years.

Mr. GRAHAM. There is no simple answer. If you want a simple answer, FAIR is happy with 425,000. When we see that 425,000 has just been dropped, we suddenly become affectionate toward the number.

The question of composition remains very complex. The existing system under the seven preferences—

Mr. SMITH. Do you not feel any obligation, Mr. Graham, to come forward with those kind of answers as well when you are in fact dealing with a number to begin with and insisting on a ceiling? Do you not feel it incumbent upon you to give information—I am not necessarily singling you out, but do you not feel an obligation if you want 425,000 to tell us where those numbers should come from and how each individual country should be capped? Or you do not feel any obligation, you just have the number and the philosophy and let us do the dirty work?

Mr. GRAHAM. No, sir. We have testified before this committee and others, and our testimony has always been basically this. We are satisfied with the existing per country ceiling of 20,000.

Mr. SMITH. That is something I did not hear.

Mr. GRAHAM. I am sorry, that is probably something that happened before you came in.

Mr. MAZZOLI. The gentleman's time is expired.

When I had my 5 minutes, I was going to mention that FAIR has significantly changed its position I think in a positive way, and I want to get into that. I think it will help us maneuver our way through this thicket.

Ms. BAKER. Mr. Chairman, could I respond to Mr. Hall's question about the GAO report and the other countries? Part of what came out of that was that report the other countries failed because they did not put adequate resources and political commitment behind the sanctions. Several of the countries in question are reassessing and going back to some of those programs to put more behind them to make them work.

Mr. MAZZOLI. The gentleman from Florida is recognized for 5 minutes.

Mr. MCCOLLUM. Thank you, Mr. Chairman. I would like to ask Mr. Graham about something. We know that your testimony has indicated today, as you have argued, that if we allow the legalization or the amnesty provisions to take place, we will provide an incentive for many others to come over in anticipation of another round of this same type of legalization, but there are a lot of folks who will argue that we can deflect this because it will be widely advertised as a one-time proposition. How do you respond to those critics who say this is just a one-time deal and there will be no magnet?

Mr. GRAHAM. They are separate questions, are they not? The question of the magnet has to do with the perception in the minds of those considering coming to the United States as to whether they might come this month and get in under the cutoff date.

There is a lot of anecdotal evidence about that when amnesty starts to be discussed, but it is anecdotal. There are no hard figures here. As to the question of whether an amnesty can be promised to be a one-time set-aside of American law, Americans do not have any answer on our experience there, but the experience of European countries is that most of the Western European countries have repeatedly extended amnesty. Canada's amnesty was not a one-time amnesty. They are on their third, I believe.

This experience, while not necessarily determinant for the United States, gives a person some cause for concern that it is very hard for a nation having taken this step once and then finding that amnesties do not work as cleanly as we hope. No one has ever designed an amnesty in which everyone we wanted to reach comes forward and when those bugs appear, other societies, humane and rational Western societies, have offered other amnesties, so the historical experience is chastening there.

Mr. McCOLLUM. You feel that as a result of this, as I do, that we will have a lot of folks thinking we will do it again, and they are going to come across once we get the pattern started?

Mr. GRAHAM. There is every reason to think that would be the case.

Mr. McCOLLUM. You have placed the registry date up to the mid-seventies. Do you have a specific date such as the one we have in the current bill?

Mr. GRAHAM. I am afraid Congressman Smith is going to be irritated with me again because we cannot name the magic year, but we are comfortable with 1975. It divides the decade in the center.

Mr. McCOLLUM. I just wanted to know for the record.

Miss Baker, you testified against expanding the current H-2 guest worker program, and yet last week we had a number of members of the agricultural community testifying about their what appeared to be realistic concerns about the possibilities that when we apply the employer sanctions to our farm worker area, that we are going to wind up with a tremendous shortfall, and they are going to have great economic problems. In your own assessment of this, it is my understanding you anticipate we will have increased farm production in the future years. Combining that factor with the fear of loss of workers, how can you be opposed to our changing the H-2 worker program?

Ms. BAKER. We need to look for creative ways to employ the people in this country at the present time who are unemployed. There have been programs in the past where people have been recruited around the country and moved into an area to work for a period of time, and I think that that is where we need to look. With the unemployment that we have here, I think there can be ways that we can better utilize the people who are here, whether they have legally immigrated into this country or—

Mr. McCOLLUM. The problem that we have had presented to us is the fact that crops are harvested on a very quick basis, string beans, for example, all of a sudden you need the workers within 3 days or you lose the whole crop. Some of the fruit crops are the same way. The farmer will say, "We cannot take the time to go throughout the country and advertise for this; we have to have a ready labor pool here or those crops are going to literally rot."



What do you say to that?

Ms. BAKER. The people brought here for guest worker programs supposedly come into the country and then go back. I think the same program can be made to work within the country where people can be found who want to do this. It could be the same process within this country that we use in the guest worker program where people are prepared and move into an area to do the work when it needs to be done, and then go back to the area that they are from.

Mr. McCOLLUM. Apparently there are not at the present time very many people in the labor pool of American domestic workers interested in this type of work at current wage rates. Would you agree that the only way this could be accomplished would be by increasing the wage rate?

Ms. BAKER. We need to develop a program to bring American workers into the system and also yes, Americans do demand and feel they have a right to decent work conditions and decent wages.

Mr. McCOLLUM. You have no specific proposals as to exactly how we go about doing this today; is that correct?

Ms. BAKER. I can prepare an answer specific to that if you like, because I know that there have been programs in the past that have worked.

Mr. MAZZOLI. The gentleman's time has expired.

The Chair yields itself 5 minutes for further questions.

Professor, when I said a moment ago that I think FAIR has changed its position to the positive, it helped refresh my memory. Last year the position was that there should be a cap, but within that cap should be refugees as well as legal immigrants, and of course FAIR stood for a change of the preference system. If I understand from your statement today, FAIR is for a ceiling of 425,000 or thereabouts, but you are willing to keep refugees outside that ceiling. The ceiling would be only for legal immigrants. You would also cease your effort to change the preference system; is that a correct analysis of your statement?

Mr. GRAHAM. I prefer to put it another way, Congressman. Of course the legislation is complex and it moves through this committee and into others and then onto the floor, and we are directing our efforts toward certain principles and we try to be flexible and try to advance the cause of reform, and obviously compromises are required. Our strong preference is for refugees under a total ceiling. That is a principle we start from and hope to come as close to that as we can. Our strong preference is to question and to eliminate fifth preference. On the other hand, that is something toward which we work in a complex political environment, so that our position today is that we are glad to see the favorable parts of the bill; the unfavorable parts we reserve judgment on.

Mr. MAZZOLI. Let me congratulate you, because it is very true, and the chairman was probably the most frustrated member of this panel at the unwillingness of major participants in this drama to recede one iota from their positions, and that means we will never get a bill. So I salute what FAIR has done. At least you are willing to consider supporting a bill that is not completely what you want and I think that shows movement, growth, and an attitude that

recognizes the reality in which we live on the Hill. I salute you for that.

Let me mention something else, something you are all three in support of, and that is putting in the bill evidence that we understand the plight of the Immigration Service and we intend to relieve that plight with money and people. I think you will be happy to see what we come out with, even though the Attorney General said 2 weeks ago that we should instead pass the bill and then pursue a supplemental.

That is not the way the bill will be written. If it does not pass, it will not be because money for enforcement, service, and implementation of Simpson-Mazzoli is not woven into it.

You have talked about a commission to periodically reexamine admissions numbers and make recommendations to Congress, the idea being that if demographic data changes, resource data change, political situations change, we can move. Let me ask you, the other side of that coin is that sometimes if you have a commission, that commission could open a Pandora's box by making political decisions on subjects which should be above politics. Can a commission buffeted by political opinion still resist the temptation to scapegoat?

MS. BAKER. Since I am the one that suggested it, we do not see the commission's job or the council's job or whatever mechanism would be set up as being one necessarily to make decisions about who comes in. What we would like to see is a look at numbers, and how that is impacting on our resource base and economics here in this country, and to look at adjusting the ceiling from time to time, either up or down, whichever way the figures and the data shows would be proper. I think it should still very much be left with Congress to make those decisions.

MR. MAZZOLI. I am thinking that Congress might be the group that would be perhaps yielding occasionally to political decisions.

MR. McMAHON.

MR. McMAHON. I find it rather bizarre that the United States really is the only country in the industrialized world that does not have a fix on foresight, and we have been working with some people on Congressman Dingell's committee to begin to get the United States into the modern world, so to speak. We really need this kind of capability, and we do not have it now. Call it foresight, capability, planning, or whatever you want. I think when we get this legislation and it looks like things are beginning to move this year, that this is the area of promise.

MR. MAZZOLI. Think in terms of how we keep this from becoming a mechanism for simply reopening numbers. Sometimes you do not want to reopen numbers. Despite the fact that the commission would be objective, it might open the box, the door which might yield to political swings and sways. Professor, you are a historian, how do you see this commission working?

MR. GRAHAM. History is not much a guide. We have been comfortable with the idea that the President recommend to Congress—it is existing machinery. It is hard to name which congressional committee would be so composed to look at the carrying capacity of society and its demographic future. One of the witnesses mentioned the year 4 for review rather than 2. That may be a better idea.



Here we are innovating, and that is very exciting and I do not think the answers are clear.

Mr. MAZZOLI. I would think that 2 years is too frequent and 10 years too far down the road.

My time has expired. The gentleman from Texas is recognized for 5 additional minutes.

Mr. HALL. Do all three of the witnesses have any type of substantive agreement on the fact that we in all likelihood will have other amnesty, grants of amnesty in the future? I think Dr. Graham indicated that there may be additional grants of amnesty in the future. Do all of you share those sentiments or not, even if we pass this bill in the present form?

Mr. McMAHON. One thing that disturbs me, as far as I can make out, neither the Senate nor the House has made a careful analysis of what amnesty would mean in the 1990's. The chain effect, the numbers of people that will come in if amnesty is granted is large. In 5 years many of these illegals will become eligible for U.S. citizenship, and depending on how the law is worded, they will then be able to bring many of their relatives to the United States.

As I mentioned in my written testimony, the State Department made a very conservative estimate that in 1993 there would be an excess of 250,000 additional people coming in. We have made a strenuous effort to try to get the data. This goes back to the idea of foresight. The data just does not exist for a study. I find it frightening that such legislation could be passed without having a real fix on what amnesty could mean in the future.

Mr. MAZZOLI. Would the gentleman yield to me just a moment? When you say 250,000 coming in, you mean 250,000 that could be qualified.

Mr. McMAHON. These would be outside the preference. These would be immediate relatives. Outside the ceiling.

Mr. MAZZOLI. You are talking about what are now called the nonnumerical preference system?

Mr. McMAHON. Yes.

Mr. MAZZOLI. Thank you. The gentleman is recognized.

Mr. HALL. You are speaking of legal immigration.

Mr. McMAHON. I am talking about if amnesty is enacted, within 5 years the people who are illegal now will have become legal residents and then would be able to become U.S. citizens.

Mr. HALL. Do you believe that in the future we are going to have to have another general grant of amnesty for illegal aliens who are in this country?

Ms. BAKER. Our intention is that there would be enough resources and commitment behind this bill that illegal immigration would be reduced considerably and that there would be no future need for grants of amnesty. While we certainly favor amnesty now, if this is serious legislation and is seriously enforced, future amnesties would impact negatively on the effectiveness of the bill.

Mr. GRAHAM. History does not give us any guides that always work, but we will provide you and the committee with a summary of the evidence from Western Europe and from Canada, and the historic evidence there is that amnesties do not fully work, and there is enormous pressure to do it again. It makes one very chastened, it seems to me.

Mr. HALL. Mr. McMahon, do you disagree?

Mr. McMAHON. No, I agree.

Ms. BAKER. I do not disagree with what Dr. Graham said. I said that our intention would be to oppose any future call for amnesty, even though we do not oppose it now. Our hope is that everything would work perfectly and that there would not be conditions that would call for future amnesties. Barring that, if there were a future call for amnesty, we would oppose it.

Mr. HALL. Are you not indicating when you say there will be a future amnesty provision, that employer sanctions will not work?

Ms. BAKER. I am saying that if employer sanctions work, there would be no need for a future amnesty.

Mr. HALL. Mr. Graham, are you saying that even if employer sanctions are imposed, you will still have another general amnesty provision in the future?

Mr. GRAHAM. In the real world, employer sanctions will not totally shut off the flow. We know that they will make a major contribution. This country is going to face problems 50 years.

Mr. HALL. I had some testimony entered into the record back in the lameduck session based upon the number of border patrol who are line workers on the border between the United States, Texas and Mexico. At any one given period of time it is 12 miles per border man on line duty. There is no way you can control the borders with that small number of people.

Mr. GRAHAM. You are correct, I am sure.

Mr. HALL. Now, do you think that if we had—I am directing this to all of you, because I do not care what you put in this bill, if you do not have people patrolling that border, and I mean down on the border where the Rio Grande flows—sometimes it is as wide as this room, sometimes you can step across it—if you do not have people patrolling and watching it, as long as these push factors remain, I do not care what the law is in the bill, people are coming across. Do you not think it would be better if we had a sufficient number of people patrolling the borders between the United States and Mexico, that that would do more to control illegal immigration than all of the sanctions that you can think of that we have been talking about for 5 years?

Mr. GRAHAM. We believe that a package of better enforcement of the border, better internal enforcement, employer sanctions, better control by State and local governments, as well as the Federal Government, over social welfare costs, as well as foreign assistance to countries with these problems, some package of those will do the best this country can do. In between giving up on the borders and believing that they can be sealed, we take the position that this package is reasonable.

Mr. MAZZOLI. The gentleman from Florida is recognized for 5 minutes.

Mr. McCOLLUM. I have a question of you, Mr. McMahon. In your testimony you have indicated that moving the registry date from 1948 to 1974 is sufficient, as opposed to the mechanism of amnesty. I am kind of curious because of that. What do you believe the United States should do with the large number of the illegals that are here from 1974 to 1980? I personally have been of the view that we would find by attrition a considerable number of people over a



period of time would go back to the countries from which they came because of the employer sanction provisions. But others believe we would be forced into rounding these folks up over a period of time, or there would be some tremendous economic hardship on some individuals and so forth. What do you perceive is the course the Government should follow with those folks or what would happen to them as a result of not having a legalization or amnesty?

Mr. McMAHON. Thank you for such a difficult question. I have worked 20 years of my life in Latin America in development and population programs, so I have great affection for the people in many of the countries there, and I understand this problem. I believe that we should not have a mass deportation. I believe that if employer sanctions were enforced properly—we know that many of the people pass back and forth across the border—this would be a disincentive for them to come back to the United States again. I think that over time many of these people would, when they try to change jobs, be unable to do so, and therefore there would be a certain amount of pressure for them to go back.

I also believe, as does the environmental fund, that anybody who has come to this country illegally and has established himself in the community, should have the right to stay here. I think that takes time. This is a difficult question—and that is why we chose 1974 as the registry date. We advanced it from 1948. We think this is a reasonable way of dealing with this problem.

I do not think the United States, given our great history of fighting for human rights, would tolerate a mass deportation. I am not considering that. But I think many of these people would go back to their own countries.

Mr. McCOLLUM. Would anybody else care to comment on the question? I would like to know what you would like to see happen or what you think would happen if in fact we did have a situation in which we had employer sanctions but we had no legalization with respect to those from 1974 or 1980 or 1981.

Ms. BAKER. I think that if we had a comprehensive immigration program, including sanctions, and it did not include legalization from 1974 on, it would be incumbent upon us, if we were serious about this legislation, to do something about finding those people and moving them out of the country. If we are stating that they are here illegally and we really want to be serious about it, then I think that is what we would need to do. I also think that would be very difficult. As Mr. McMahon said, he believes that if people have established themselves here and become a contributing member of the community, they should be able to stay.

How do you place a year on that? People who came here after 1974 have not had time to establish themselves? I think perhaps there are many people who came later who have also established equity in this country. It will place burdens on us economically to find people here illegally and to deport them but, more importantly, it would also I think dilute the intent and the strength of the reform in the eyes of people.

Mr. McCOLLUM. You disagree with Mr. McMahon that a lot of these folks would by attrition return to Mexico to stay and not come back again?

MS. BAKER. I think it is reasonable to expect that would happen, but I do not know how many would do that.

MR. GRAHAM. We do not believe anything unusual needs to be done about that problem. The INS attempts to carry out its duties inside the country. They probably need more resources in that effort. People will either return or avail themselves of the multiple opportunities for regularization. There is an immigration bar. We believe the problem would solve itself. We never use the language "massive deportation," and I never met anybody that did.

MR. MCCOLLUM. Thank you very much.

MR. McMahan, you have indicated you do not believe the push factors that are causing a lot of folks to come here, particularly from Mexico, can realistically be addressed by this country for the next decade or two and, therefore I believe I am correct in reading your testimony that you believe we should not consider the critics' concerns over this and should go ahead and address the problem of employer sanctions and other provisions. Do you have any suggestions for the long-term involvement in years out that the United States should have with countries such as Mexico with regard to these push factors?

MR. McMAHON. Definitely. I think that in the long term the whole world is going to have to face up to its population problem. As I mentioned before, I worked for 20 years in Latin America on population problems. Most of the countries in Latin America have population policies. The United States does not. If we are going to try to solve other people's problems, I think we should get our own house in order here in the United States. Then we would truly be an example to the world. We are one of the few signers of the world population statement of the 1974 Bucharest Population Conference that has not enacted a population policy. Most of these other countries have. They are making an effort to reduce their population-growth rate, and we should help them in that.

MR. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida is recognized for 5 minutes.

MR. SMITH. Thank you, Mr. Chairman. I would like to follow what Representative Hall discussed with regard to some of the things that are obviously more important than dealing with ethereal numbers that we might try to achieve in order to attain down the road a balanced population growth pattern. As long as there is so much emphasis being placed on sanctions once they are inside the country, my feeling is that we are never going to be able to achieve that golden dream because we are allowing them to come inside and attempting to deal with them while they are here.

I would like an overview on exactly what you think in terms of the amount of money that the INS has requested in the President's proposal this year for the job that they are going to have to do in terms of being the lead agency to see to it that the lowest number of illegal as opposed to legal aliens are going to be coming into this country. You know, we talk about numbers, and you tell us how to get it into the shoebox, but there are a bunch of numbers we have that we have little control over. If they get you that throws the whole scheme out of whack, has in the past and will in the future. I would like a comment about what you think the administration's



proposal will do in terms of being able to achieve what you want to achieve.

Mr. McMAHON. In talking to some border patrolmen recently, they told me that their apprehensions have reached a saturation point. With these push factors from Mexico, they can just about apprehend 1 million people a year.

Obviously, we have to have better enforcement on the border.

They tell me that they can do that with increased numbers of border patrolmen and better equipment.

I went down to the southern California border last summer and spent a week end out there and saw the terrifically difficult job they had to do in trying to seal off that border.

They don't have the equipment or the manpower. I think it unfortunate that in a country like ours, we spend billions for defense and practically nothing for policing our ports. That is one of the attributes of a sovereign State, control over its borders.

I am not completely familiar with the latest administration proposals.

Mr. SMITH. My impression is that it is basically the same as last year.

Mr. McMAHON. They definitely need an increase in budgetary help.

Mr. SMITH. My State, of course, does not border Mexico, but we have water borders rather than land borders, and that has not prevented our State from also having been subject to a mass influx of refugees. What would you do in terms of that as well?

Would you perceive that the United States ought to be directing certain assets for the purpose of increasing the Coast Guard and Naval capacity as opposed to border patrol, which can't walk on the water these days?

Mr. McMAHON. There are systems whereby you can computerize the whole internal system in the United States so we could have a fix on how many people come in and go out.

One frustration we have in trying to run our population projections is the U.S. Census Bureau, INS, and the State Department do not know how many people leave the United States every year.

That is one part of that equation that we have no handle on whatsoever. I think we should get a handle on that.

Mr. SMITH. I think we need a handle on a lot of things, but unless we are going to have cooperation, and this all goes back to the very beginning, and even to the point of using statistics, Mr. Graham, my opinion is you can use statistics obviously; you can play games with any numbers you want to. The bottom line is unless you tell me in advance how much of the country's budget went into the enforcement procedures, then the statistics are not valid at all, because it was only a token attempt as the enforcement procedures were on the books, but no effort was made like I perceive in the United States to really put teeth into their enforcement mechanism.

You can make sanctions like a death penalty. If you hire an illegal alien, you are subject to the death penalty. That won't stop one illegal alien from coming in if nobody enforces it.

Mr. HALL. I ask unanimous consent the gentleman have two additional minutes.

Mr. MAZZOLI. I would prefer to take my time and yield to the gentleman, so we keep this thing on-track.

We are not able to have a third full round, but maybe we can have a third round of a couple of minutes each.

Let the chairman yield himself 3 minutes, and I would yield 1 minute of that to the gentleman from Florida.

Mr. SMITH. I will yield to the gentleman from Texas.

Mr. HALL. I understand we have 2,860 border patrol positions at this time; that INS says it can only hire, train and place 400 border patrolmen per year.

It will take 7 years to get this number up to 2,800 people.

Now, in view of that fact, is there not a role for the local and State law enforcement people to help enforce this immigration law?

Mr. GRAHAM. Barnaby Zohl, Director of Congressional Relations, has an answer to that, if you would, or we can supply that, or he can speak to the question.

Mr. HALL. Supply it.

What is your position on local law enforcement in helping them try to corral this immigration problem?

Ms. BAKER. We have not given much thought to this issue.

I think that the local counties and States certainly have a vested interest in seeing that immigration law is enforced, but I think that, if they are involved in enforcement, it would have to be handled very carefully and certainly through the INS centralization. There has to be an integrated system, because the danger is that you would have varying levels of enforcement in different areas.

Mr. McMAHON. We are an environmental group, and we really have not studied this problem.

Mr. MAZZOLI. Doctor, in your testimony, you suggest the Immigration Service would abdicate their responsibility to screen legalization applicants. I would ask you at some point to look at the more recent formulation.

They have changed their view on that in which they will make a personal, face-to-face interview with every single one, not just a random sampling. They will, however, continue to delegate the initial contact to the volunteer agencies.

Take a look at it, and if you still feel like your position is correct, let us know.

Do each of you believe there is some displacement of U.S. workers by undocumented workers in the United States?

Mr. GRAHAM. Without question.

Ms. BAKER. Yes.

Mr. McMAHON. Absolutely.

Mr. MAZZOLI. My time has expired.

Mr. McCOLLUM. I will yield back my time, Mr. Chairman.

Mr. MAZZOLI. The gentleman from Texas is recognized for 3 minutes.

Mr. HALL. Do any of you feel that we have devoted as much attention to the officials in Mexico working, helping, trying to get them to work with us on this immigration problem?

Mr. McMAHON. Well, the way I understand it, the Mexican law holds for an open border for Mexican citizens. They can pass back



and forth. I think there have been some studies to determine the number of Mexicans that move back and forth across the border.

The Mexican Government has conducted a large study.

Mr. HALL. Is it not a fact that the last regime in Mexico had indicated displeasure at this immigration bill?

Mr. McMAHON. Absolutely.

Mr. HALL. What about the present administration?

Mr. McMAHON. I don't know about the present government, but it has been their policy over the years to look at the illegal immigration to the United States as a safety valve on their tremendously difficult economic problems.

Mr. HALL. As long as they take that position toward the immigration problems that we are having here, do you think they are going to do anything to help us enforce this law?

Mr. McMAHON. No, I don't.

Mr. HALL. Do all of you share that view?

Mr. GRAHAM. Not to help us enforce the law; there comes a time when nations who are neighbors have somewhat irreconcilable difference in some areas.

We may be at that point in this area.

Ms. BAKER. There are aspects of immigration control in this country that are beneficial for Mexico, and I think that that is recognized.

There needs to be more dialogue. I don't think that it would be appropriate for us to totally frame our positions and our legislation based on Mexico's perceptions, but there can be more cooperation with more dialog and recognition and discussion of how immigration reform can be mutually beneficial.

Mr. HALL. You say there is an irreconcilable conflict of interest between the United States and Mexico?

Mr. GRAHAM. To some extent, there is a conflict here in which these two governments perceive their national interests in contradictory ways, and we will have to do what we see fit.

Mr. HALL. As long as that condition exists, it is going to be a difficult proposition to enforce this immigration law?

Mr. GRAHAM. Of course, it is going to be difficult.

Mr. MAZZOLI. The gentleman from Florida is recognized for three additional minutes.

Mr. SMITH. To throw another gloomy statistic, since enforcement does not seem to work all that well, the push factors are not going to be reconciled at least for the short-term and we don't seem to be having an administration at this moment whose thoughts in the coming year are going to be increasing the enforcement capabilities.

Look at the legalization process. Even the committee reports and all the speakers that have been before us as witnesses have also said that the reality of the situation is that probably about 20 percent of the people who will be eligible under the legalization plan will step forward. What about those other 80 percent? What will we do in terms of the impact on the population that we will not have any control over, even if we solve all these other problems?

Mr. GRAHAM. I thought that was Congressman McCollum's basic concern, that 80 percent, that is probably not a bad guess. Nothing special needs to be done. They will either return when they find

the country in employment terms unhospitable, or they will avail themselves of legal avenues.

Mr. SMITH. If, in fact, they find it inhospitable, because there is a commitment to enforce sanctions, but we are dealing now with what I am claiming to be the scenario that enforcement and sanctions are going to be less than adequate, so the attrition rate is not going to be what you project. There is going to be a large impact there and a movement, I believe, the magnet attraction, not from the amnesty, but the lack of applying for amnesty and not getting caught.

These people will be sending down the message again, et cetera.

Mr. GRAHAM. I would be discouraged if I thought that the Congress would give in to the administration's current short-sighted view on the amount of resources that are appropriate in this area.

Mr. SMITH. Oh, well, thank you.

Mr. MAZZOLI. The gentleman from Florida is the newest member of our subcommittee. He has concentrated over the last 6 days of these hearings on the critically important issue of resources, and I think that his comments and those of the other gentleman from Florida, point up the fact that INS has got to have more people and more resources.

Thank you very much for your testimony. We appreciate it.

We will call our second panel, but, before I do, I would like to make a note for the record. We have just been joined by a group of young students from Notre Dame University. We welcome the students here.

**TESTIMONY OF DALE DE HAAN, CHAIRMAN, COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS, AMERICAN COUNCIL FOR VOLUNTARY AGENCIES, AND DIRECTOR OF THE IMMIGRATION AND REFUGEE PROGRAM OF CHURCH WORLD SERVICE; HOWARD KOHR, ASSISTANT WASHINGTON REPRESENTATIVE, AMERICAN JEWISH COMMITTEE; AND ALTHEA SIMMONS, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE**

Mr. MAZZOLI. We call our next panel, Mr. Dale de Haan, chairman of the Committee on Migration and Refugee Affairs, American Council for Voluntary Agencies, and director of the Immigration and Refugee Program of Church World Service; Mr. Howard Kohr, assistant Washington representative, American Jewish Committee; and Mrs. Althea Simmons, executive director, National Association for the Advancement of Colored People.

Welcome.

Perhaps for no particular reason, we had this witness list typed up Mr. de Haan, Mr. Kohr, and Mrs. Simmons; let's proceed that way.

Mr. DE HAAN. I am here in two capacities today, principally as the chairman of the Migration and Refugees Affairs Committee of the American Council of Voluntary Agencies, and secondly as director of the Immigration and Refugee Program of the Church World Service.

I would like to summarize the statement which I have.



I have one other request, Mr. Chairman. There are several agencies associated with ACVA who would like to submit statements.

I think that will be done in the next few days.

Mr. MAZZOLI. Certainly.

Mr. DE HAAN. Mr. Chairman, members of the subcommittee, it is a pleasure for me to address the subcommittee today for a few moments with respect to the pending legislation.

As I am wearing two hats, I will make every effort to keep discrete my comments for ACVA and those for Church World Service, but first I want to reaffirm to you our support for immigration reform and commend you, particularly you, Mr. Chairman, for your leadership in this area over the past several years.

Many of us have been involved in the current reform effort since the days of the Select Commission and many years before that, and have a lot of interests tied up in the process of this and other committees in forums.

I might point out, we have an investment here, because we are not only dealing with long-standing commitments of the voluntary agencies, but also with the clients of voluntary agencies, both documented and undocumented aliens.

I will first comment on legalization.

We as agencies have been supportive of legalization for many years for the reasons outlined in our statement. We would emphasize, however, that the very reasons for legalization argue that it be done comprehensively with a cutoff date as current as possible, and without any discriminatory application.

We want to compliment the subcommittee for recognizing the important role voluntary agencies can play in the implementation of any legalization program.

However, I want to underscore and stress in behalf of the agencies that our role as an initial buffer between the Immigration Service and a nervous undocumented community can only be effective so long as that community can be assured of our independence from government authorities.

In this connection, it would be helpful if the legislative history makes clear the importance which this subcommittee places upon the independence and integrity of the private voluntary agencies and the implementation program.

With respect to refugee admissions, Mr. Chairman, and putting everything under a cap, we commend you for your leadership against this in the past. We oppose the overall cap for the reasons stated in our statement.

If I could make a few comments for Church World Service, First of all, with respect to employer sanctions, we have heard a lot from our member-denominations in the National Council of Churches regarding the potential discriminatory aspects of employer sanctions. This is a major concern. The concerns of the people in the Protestant churches about this question are real and run deep. We suggested in our written statement a couple of approaches to sanctions to which the subcommittee might wish to give further attention.

The one that I would like to underscore is the one on sunset provisions in which sanctions are used for a period of time, after which they are reviewed. We feel that this might have merit.

The other one has to do with targeted sanctions, based on the pattern and practice of abuse.

The second item is the adjudication and asylum question. The subcommittee is aware of our long involvement in the area of asylum here in the United States. We believe the independent administrative system in the bill will be a great advance in this field.

We do foresee the potential for some continuing problems, particularly in the area of providing timely evidence on country conditions and summary exclusion.

Our written statement contains some proposals in this respect which we would ask you to consider.

With respect to numbers and preferences and the question of H-2 visas, we place a great stock in the recommendations of the Select Commission with respect to both numbers and preferences and the H-2 program.

Namely, that there is no evidence that current immigration runs counter to our national interest, and, secondly, that an expanded H-2 program is unwise in the context of legislation.

Mr. MAZZOLI. Mr. de Haan, your 5 minutes have expired.

Mr. DE HAAN. OK. In this connection, we are pleased that the current bill does not alter numbers and preferences, but would suggest that the current H-2 law as it is on the books, is adequate to carry out a program in this area.

[The complete statement follows:]

STATEMENT

of

DALE S. de HAAN

CHAIRMAN

COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS

AMERICAN COUNCIL OF VOLUNTARY AGENCIES FOR FOREIGN SERVICE

before the

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

Monday, March 14, 1983

Mr. Chairman, members of the Subcommittee, it is a pleasure for me to address the Subcommittee today with a few comments with respect to the Immigration Reform and Control Act (H.R. 1510) in my capacity as Chairman of the Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service (ACVA), which includes:

- American Council for Nationalities Service
- American Fund for Czechoslovak Refugees
- Buddhist Council for Refugee Rescue and Resettlement
- Church World Service
- HIAS (Hebrew Immigrant Aid Society)
- International Rescue Committee
- Lutheran Immigration and Refugee Service
- Migration and Refugee Services, United States Catholic Conference
- Polish American Immigration and Relief Committee
- The Presiding Bishop's Fund for World Relief/The Episcopal Church
- Tolstoy Foundation
- World Relief of the National Association of Evangelicals
- YMCA of the USA

I want to make clear first of all that all of the agencies listed above support immigration reform. Many of us have been involved in the current reform effort dating back to the days of the Select Commission on Immigration and Refugee Policy and before, and have been participants in the processes of this and other committees and forums. As you know--and as my presence today hopefully illustrates--we have a considerable investment here, as whatever may ultimately be enacted very much affects both our constituents throughout the nation in houses of worship, community centers, and elsewhere and our clients, which includes immigrants and refugees, the documented and undocumented.

Most of our agencies have interests and concerns with respect to all the titles of the proposed legislation. However, as a committee of agencies, we collectively have particular interests in two areas:



legalization and refugee admissions ceilings.

### Legalization

Many of us have years-old policies for the legalization of undocumented aliens in the United States. There are many reasons for this, most of which have already been introduced to the debate on immigration reform over the past several years. For the most part, we feel there are simply no viable alternatives to legalization. It needs always to be remembered that we are talking about the fates of potentially millions of people whose permanent presence in the United States is probably a fait accompli. Massive deportation is not an option, either practically or morally. While there are other measures which might be taken to pressure undocumented persons to repatriate--such as a retroactive employer sanctions--we do not believe they would result in the departure from this country of substantial numbers of undocumented persons. After all, we are dealing with individuals who have developed ties here--many substantially so--and have basically burned their bridges with their homelands.

Considering all this, the question really becomes, in our view, is it best that this "permanent" population be here legally or illegally? The degree of exploitation of undocumented persons that we and our constituents have witnessed have led us to conclude that legalization--and a generous one--is the avenue upon which we should be travelling.

Let me make a few comments in the way of a couple of principles which we feel should guide the development of a legalization program through the legislative phase, the regulatory phase, and beyond.

First, the program should be comprehensive. The reasons for a legalization program seem, to us, to dictate this. Most of the arguments are commendably covered in the House Committee on the Judiciary report from last year on H.R. 6514 (Report 97-890, Part 1 pp. 35-36), namely, (1) to enable the Immigration and Naturalization Service to use its limited enforcement resources in other useful areas, (2) to allow qualified aliens to contribute more to society, (3) to provide for the first time reliable data on the source and characteristics of undocumented aliens to further facilitate enforcement efforts to curtail future flows, and, most importantly, (4) to prevent exploitation of this vulnerable subclass. All of these--and particularly the last--point toward a program which covers comprehensively the undocumented population and eliminates the undocumented subclass.

Being "comprehensive" could mean a couple of things in practical terms. First, it means that the cut-off dates for the program should be made current, for all the reasons outlined above. Secondly, it means the program should be inclusive, within the cut-off dates eventually legislated and the appropriate exclusions of the law. As we believe this to be the intent of Congress, we would like for this to be made clear if not in the bill itself, then in its legislative history. We would be prepared to work with the Subcommittee on appropriate language to this end, if necessary. Our experience last year in discussing potential regulations indicates that such clarity of intent becomes important in the framing of implementing regulations and the designing of the legalization program.

A second principle, in addition to being comprehensive, is that it is important to the success of the legalization program that the indepen-

dence and integrity of private voluntary agencies assisting in the program be recognized. We applaud the Congress for recognizing the important role we as agencies can play in the legalization. We believe our involvement in screening and application acceptance will be advantageous to the intent of the program as a whole, and will also help provide added safeguards to those applicants whose status may be unclear, or for those who are clearly ineligible to apply for legalization. However, our involvement in this way can only be effective so long as the undocumented population is assured of our independence from government authorities, namely the Immigration and Naturalization Service, and that, thereby, the presence of undocumented in our offices will not result in their deportation. It is important, then, that one of the fundamentals of our involvement with government agencies in this program be the concept of a cooperative endeavor as against control. We have worked effectively with government agencies in the past in the implementation of programs of joint interest and believe such a cooperative endeavor can be worked out in this case. It is our request, again, then, that the legislative history make clear the importance which this Subcommittee places upon our independence as described within the above context.

#### Refugee Admissions

Another area in addition to legalization in which we as agencies have great concern is that refugees be kept out of this bill. We shared the concerns of many last year regarding efforts to place a legislated ceiling on the numbers of refugees and immigrants to be admitted each year. There was also an attempt in the other body to provide a Congressional veto

over refugee admissions above a "normal flow." As you know, these attempts did not succeed. We think this was wise and encourage the Subcommittee to oppose any efforts to merge refugee admissions procedures into the bill.

As the Subcommittee knows, the Refugee Act of 1980 established a procedure in which the Administration and Congress consult in determining refugee admissions ceilings for the subsequent fiscal year. This consultation procedure has been in place for three years and, in our view, has been an adequate mechanism for regulating annual admissions. This being the case, we do not see the necessity to enact modifications to the process which are both radical and, in fact, harmful. Both a legislated cap and a legislative veto of admissions over a "normal flow" complicate the country's ability to react quickly at precisely those times when flexibility is most needed.

#### Conclusion

Again, I want to thank the Subcommittee for this opportunity to share with you some of the views of the agencies represented on the Migration and Refugee Committee of ACVA. We want you to be assured of our desire for good reform and of our commitment to work with you to this end.





NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE UNITED STATES OF AMERICA

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STATEMENT

of

DALE S. de HAAN

DIRECTOR

IMMIGRATION AND REFUGEE PROGRAM

CHURCH WORLD SERVICE

before the

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

Monday, March 14, 1983

Mr. Chairman, members of the Subcommittee, it is a pleasure for me to address the Subcommittee today with a few comments with respect to the Immigration Reform and Control Act (H.R. 1510) in my capacity as Director of the Immigration and Refugee Program of Church World Service. We and our member Protestant, Anglican, and Orthodox denominations are very much interested in immigration reform. We have been involved in the current reform effort dating back to the days of the Select Commission on Immigration and Refugee Policy and before, and have been participants in the processes of various Congressional committees and other forums. As you know--and as my presence today hopefully illustrates--we have a considerable investment here, as whatever may ultimately be enacted very much affects both our constituents throughout the nation in churches, community centers, and elsewhere and our clients, which include immigrants and refugees, the documented and undocumented.

You would be interested to know that virtually all our 32 member denominations have at their highest levels examined and debated the Simpson-Mazzoli bill. In many cases, denominational assemblies have voted on specific policies related to immigration reform covering many of the issues which the Subcommittee is looking at in its current hearings. Today, we represent these views.

It will not be necessary for me to make specific reference to the proposed legalization program or to possible amendments to include refugee admissions in the subject bill. Our views on these matters are covered within the testimony today of the Committee on Migration and Refugee Affairs of the American Council of Voluntary Agencies for Foreign Service (ACVA),

### Employer Sanctions

One concern we have is with the increase in discrimination in hiring which may result from employer sanctions. Much has already been said about this, so I do not intend to belabor the point. However, I would like to highlight a couple of possible approaches which were discussed last year and which peaked the interest of the Protestant community. We would strongly urge the Subcommittee to consider seriously in its current deliberations the following options.

One option is the "sunsetting" of employer sanctions after an appropriate trial period. This possibility was considered last year, but, in the end, was voted down. However, we believe the intensity of minority concerns expressed in the last few months not only by minority organizations but also by minorities and others in our own pews justify a much closer look at a sunset provision. The history of immigration legislation, in our experience, is that once it becomes law, the Congress does not want to touch this contentious area again for several years. A sunset provision would overcome this tendency and force an evaluation of the discriminatory impact of sanctions.

Another option is to target the sanctions, at least for the time being, to employers who have a history of hiring undocumented aliens or who are known hirers of undocumented. This approach, the so-called "Schroeder Amendment", also came under consideration last year, but time did not permit it to be fully debated. Our own calculations at the end of the last session showed the amendment gaining in support.

This approach is a compromise on the employer sanctions issue that holds promise for reducing the potential for ethnic discrimination. It

provides for a selective application of employer sanctions, as not all employers would be required to examine identity documents, only those who have been identified as problem employers. Since not all employers would be under the threat of prosecution for hiring undocumented persons, not all employers would have an incentive to avoid hiring ethnic applicants. This would substantially reduce the threat of discrimination in employment. In addition, the fact that the Attorney General's enforcement efforts would be focussed on a smaller number of employers means that there could be better supervision of the hiring practices of employers.

From the perspective of efficient use of enforcement resources, this approach is highly desirable. Instead of wading through the hiring records of all employers, the Attorney General could direct attention to the few employers who are shown to have violated the law. This is a common-sense approach. Based on current enforcement of the labor laws, the INS personnel already know who the big employers of undocumented aliens are. This approach allows the Attorney General to do what he has long wanted to do: prevent employers from continuing to hire the undocumented, even after they are caught.

From the perspective of employers, this should be a highly desirable substitute, as it would allow the millions of innocent employers to escape any paperwork duties. Only those who have been warned of their violations through the administrative process can expect to have the duty of examining documents placed upon them.

Again, we urge that these two approaches be considered as ways of addressing the discrimination issue.



### Adjudication and Asylum

A long-term concern we have had is with the area of adjudication and asylum. In this connection, we believe the subject sections of H.R. 1510 make significant advances in the field.

If our comments are a bit lengthy, it is because our commitment to this area has historically run deep. We have been in the forefront in the area of asylum for many years, and have been intensively involved over the past decade with Haitians and, now, refugees from Central America. We saw, ten years ago, that our asylum procedures in the United States were very much undeveloped. The system was ripe for abuse, and indeed the courts over the past intense decade as well as the political process itself were important in addressing certain abuses and in protecting those needing safe haven in our country. It has become clear to us--just as it has to the Subcommittee--that it is essential that we reform the administrative system for asylum application. There has been a general trend among countries with similar legal traditions to our own and which are burdened by the asylum phenomenon to streamline asylum procedures. Certainly, our own backlog of over 130,000 applications for asylum requires that we take a hard look at reform. We think the direction to go is the one the Subcommittee has taken: to professionalize the cadre of officers and judges administering and adjudicating asylum claims and to establish an independent administrative board to oversee their actions.

As the Subcommittee has witnessed, one of the most difficult aspects of this kind of reform is to streamline without infringing upon the essential rights of those subject to the process. In this connection,

permit me to note that we will be supporting amendments to strengthen judicial review of asylum denial and to proffer a few observations.

I. The reforms of H.R. 1510, while laudable, may still, in our view, not offer the kind of "speedy" process basic to our system. The major "bottleneck" which would probably remain is one identified by the Committee on the Judiciary report of last year on H.R. 6514, which states,

the facts support the position that administrative shortcomings...has caused the enormous backlog in asylum cases. There are now 110,000 asylum cases pending in the Executive Branch. Today, it takes the State Department four months to respond to an INS request for a country conditions report. (Report 97-890, Part 1, p. 53)

As the Subcommittee well knows, the State Department "bottleneck" is caused by the need for "advisory opinions" from that department to document, for those administering and adjudicating asylum claims, the country conditions in the homeland of the applicant. The problem is, in essence, one of evidence and its timely provision in the asylum process.

Therefore, it is essential, we think, that reforms in the asylum area also include provision for speedier methods for obtaining reliable evidence on country conditions. We would be pleased to work with the Subcommittee on appropriate language to this end. For the present, however, the following concepts we believe to be worthy of the Subcommittee's attention.

First, we suggest that there should be within the process an entity with specific responsibility for ensuring that adequate and appropriate evidence is readily available to the proposed U.S. Immigration Board (USIB) and the Administrative Law Judges under its supervision. This might be facilitated by the establishment of an advisory committee or panel

under the supervision of the USIB which would, on its behalf, ensure that country profiles are under constant preparation and are constantly updated. This advisory body could be composed, for example, of experts from the private sector, as well as knowledgeable persons from government.

We want to assure the Subcommittee of our sensitivity to "over-bureaucratizing" the asylum process. Certainly, whenever we add layers to the process there is the potential for yet another bottleneck. However, in this instance we believe the reform suggested expedites, rather than complicates, the system.

Second, we may need to think about variegating our sources of evidence on country conditions to a greater extent than exists in the current system. It would possibly be desirable to reduce our central dependence upon the Department of State's assessments and to rely also upon the relevant judgments of international tribunals to which the United States is a party, determinations of the United Nations High Commissioner for Refugees as well as, potentially, other international organizations, and so forth. In this way, the system would not be dependent upon timely contributions of evidence from any single source, but could be assured of evidence from several sources.

Finally, it may be necessary, in the interests of a speedy, yet fair, process, to permit or even encourage some rebuttable presumptions in favor of applicants from select countries which are known to violate consistently the rights of their citizens. Such presumptions could be stated by the USIB on the recommendation of the asylum advisory committee. We would envision the burden of proof in these cases remaining with the applicant, in that the applicant would still be required to make

a showing as to his/her persecution or fear of persecution, membership in a class subject to persecution, and/or other such relevant testimony or evidence. However, because a rebuttable presumption would exist in favor of applicants from select countries, the standard of proof required of these applicants would be lower than in cases of individuals from countries for which such presumptions do not apply. Further, because such presumptions are rebuttable, counsel for the government would be in the position, in any case where it felt it appropriate, to present evidence contesting the presumption.

It is important, we think, to keep the asylum process in perspective as but a part--albeit an important one--of our overall immigration law and policy. Certainly, as an important element in our historic commitment to assisting the oppressed, our asylum policies have tremendous symbolic importance. Indeed, also, many of our friends around the globe look to us as an example of how they should treat the matter of political asylum. In this sense, our asylum laws and policies are of immense importance.

But we must also remember that, for the United States, we are not talking about an inordinate asylum burden in numerical terms. While we at present have an accumulation of over 130,000 asylum applications, this backlog is one which has developed over several years. In any given year in the asylum field, we are not likely to be addressing more than a small percentage of our total immigration. The Subcommittee is to be commended for recognizing both the symbolic and substantive importance of reform as a necessary step in maintaining the integrity of the asylum process, but also deserves praise for not limiting the process to a degree not reflective of the actual number of asylum applications we will probably be receiving in any given year.



II. The Committee on the Judiciary, as we have stated, has outlined some admirable reforms in the adjudication and asylum area. We suggest that it might enhance those reforms if the Subcommittee--or even the full Committee--were to describe in the legislative history the general credentials of the types of individuals it would see serving as Administrative Law Judges or on the USIB. We are prepared to assist in this task. It might be desirable for example, for it to be stated on the record that nominees for ALJ positions must be lawyers with training or experience in a related field of law, such as administrative procedure, immigration, civil rights, or international law.

III. Finally, with respect to the adjudication and asylum sections of the bill, permit me to make a few comments regarding the proposed "summary exclusion" procedures. We admittedly are somewhat nervous about this procedure, considering the potential that genuine refugees would be excluded. Granted, there are healthy protections in H.R. 1510 against such a possibility. However, a particular problem we foresee is that, based on our experience, applying for asylum--and even communicating to a judge or official one's intention to apply for asylum--often requires knowledge of technical terms not readily known to refugees seeking safe haven here.

We have witnessed instances in which immigration officers have made good faith efforts to determine whether an individual seeks asylum in the U.S., but because that individual was unable to articulate his intentions with the requisite technical vocabulary, he was turned away. We have later found that many of these individuals did indeed suffer persecution in their home countries, but simply did not have the knowledge or wherewithal at the time of attempting an entry into the U.S. to

explain their plight in terms which would immediately identify them as asylum applicants.

To give an example, we are aware of one instance in which INS officials asked directly a group of Haitians through a Creole interpreter whether they intended to apply for asylum. The entire group replied with a resounding, "No." Later investigation revealed that the interpreter had used the Creole transliteration of the word "asylum," which in that language has nothing to do with refugee status, but has everything to do with the state of one's mental health. Upon further questioning, it was revealed that many in the group did in fact intend to apply for asylum and desired counsel.

It is our recommendation, therefore, that persons seeking to enter the United States without appropriate documents be informed not only of their right to a hearing, but also of their right to representation as set forth in section 292 of the Immigration and Nationality Act. In this way, refugees seeking to enter would be made aware of the possibility of assistance of a technical nature (i.e., legal counsel) in articulating their claims to asylum.

#### Numbers and Preferences/Temporary Workers

In our own consideration of both numbers and preferences questions and temporary workers, we have given great importance to the recommendations of the Select Commission on Immigration and Refugee Policy. The Select Commission found no evidence that current immigration runs counter to our national interests and reaffirmed our historic emphasis on family reunion. In this connection, we are pleased by the reaffirmation of the Committee on the Judiciary last year of this historic commitment in

not amending the current law pertaining to the immediate relative and preference immigration programs.

As for temporary workers, the Select Commission advised against the establishment of an expanded temporary worker program. We concur with this and suggest that the H-2 visa program in current law is adequate. While there may be important adjustments which need to be made to the program, these can probably be accommodated through administrative measures with Congressional oversight as needed.

#### Conclusion

Again, I want to thank the Subcommittee for this opportunity to share with you some of the views of Church World Service and the Protestant, Anglican, and Orthodox churches we represent. We want you to be assured of our desire for good reform and of our commitment to work with you to this end.

STATEMENT ON H.R. 1510

before the

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

U.S. HOUSE OF REPRESENTATIVES

MARCH 23, 1983

submitted jointly by:

AMERICAN BAPTIST CHURCHES  
Office of Governmental Relations

CHURCH OF THE BRETHREN  
Washington Office

UNITED CHURCH OF CHRIST  
Office for Church in Society



RELIGIOUS CONCERNS IN IMMIGRATION POLICY

Religious groups have an interest in immigration policy, as in all public policy, because of our desire that ethical considerations should guide governmental conduct. This concern is heightened by the fact that immigrants and refugees are politically powerless -- they do not vote -- and as readily identifiable minorities are too easily made scapegoats of national or local problems. In Jewish and Christian traditions there are powerful reminders that sojourners and aliens are God's people, and the obligations to deal fairly extend to those outside the nation.

The current drive for immigration reform focuses primarily on a failure of immigration law enforcement which has resulted in the illegal immigration of millions of people, up to six million of whom remain as residents. In addition, crises in Central America and continuing repression in Haiti have driven thousands of desperate people to seek refuge in the United States, only to be denied shelter by administrations more concerned with political alliances.

We believe the main ethical principle relevant to discussion of immigration is the Golden Rule, "Do unto others as you would have them do unto you." While recognizing that the realities of national sovereignty require differences of treatment of people of other nationalities, we insist that basic principles of fairness and certain fundamental substantive rights are applicable to all people. These ethical criteria, as interpreted by denominational policy statements, will be applied to the major topics of HR 1510, this year's vehicle for immigration reform.

ENFORCEMENT

...not wish to... of inadequate abilities to enforce the... the public demands more effective enforcement. Presently, illegal immigration is harmful to US citizens, who must compete for jobs with those des-

nerate for any employment. It is harmful to illegal immigrants themselves as their illegal status makes them easy prey for exploitation by employers and others. More effective enforcement of US immigration law is needed to reduce these dangers.

We insist also that increased enforcement not be regarded as a complete solution to the problem of illegal immigration. At best it guarantees a life of grinding poverty to many non-US citizens. A comprehensive, international approach to illegal immigration is needed. This will require larger and more effective development assistance programs, careful adjustment of trade and investment policies, and a firm commitment to international protection of human rights.

The basic goals of immigration law enforcement should be:

- protect the access of US workers to jobs
- protect employers from unfair wage competition through use of illegal foreign labor
- protect the basic rights of undocumented workers.

While the first of these has dominated debate on immigration policy, the others are also valid interests. Innocent employers deserve protection from the unfair advantage gained by cheap labor. In some sectors of the economy this may ultimately require a review of the terms of international trade.

Protection of the rights of undocumented immigrants is not only just, but helpful to fair enforcement. It is a dangerous notion to imagine that denying rights to any group can benefit society. Illegal immigrants are human beings entitled to basic fairness, and this should include the protection of their rights to recover damages from those who have wronged them, as well as fair hearings and basic due process of law in deportation proceedings.

#### EMPLOYER SANCTIONS

We understand the proposals for employer sanctions as attempts to reverse the effects of the so-called "Texas Proviso" in current law which exempts employers

from the prohibitions against harboring aliens. By prohibiting employment of persons without identity documents, the employer sanctions provisions would protect the interests of US workers. The provisions have major flaws, however, in other respects.

1. Under employer sanctions, a disproportionate share of the risks of enforcement will fall on ethnic Americans.

Although employer sanctions passed only in the Senate last year, some employers assumed it was law and began requiring their Hispanic employees to produce proofs of citizenship or legal residency. Based on past experiences of employment discrimination, we fear that ethnic Americans will more frequently be asked to present documents, more frequently have their documents questioned, and more frequently be denied jobs as employers seek to error on the "safe side" of risks of punishment. Given the lack of an effective penalty for misuse of the proposed worker identification card, we fear that some local police forces and others will more frequently demand it of ethnic Americans. These are heavy risks to impose on a disadvantaged group.

2. The bill presumes all employers are guilty of violating the immigration law.

Although it is widely known that certain regions of the country, certain sectors of employment, and even certain specific employers are the major employers of illegal immigrants, the proposed system of employer sanctions will impose on all employers a duty of recording documents. This is unfair to the millions of employers who have engaged in no illegal conduct. Such record-keeping burdens might be more justified if the practices of employing illegal immigrants were more widespread, but the practices are in fact identifiably concentrated. The burden on innocent employers also increases the risks of ethnic discrimination as employers seek shortcuts such as denying applications to those who appear "illegal" in the eyes of the employer. Both employer and job applicant are made victims by this aspect of the law.

Particularly since the release of the General Accounting Office report on

the effectiveness of employer sanctions we have had grave doubts about the wisdom of this policy, and we would encourage the Subcommittee to energetically seek for other options. Nonetheless, recognizing that employer sanctions is the leading legislative proposal for immigration law enforcement, we urge the Subcommittee to craft a proposal that will minimize the risks of ethnic discrimination and abuses of enforcement tools.

The first alternative approach we urge you to consider is that offered by Representative Schroeder in the last Congress, which would require record-keeping only by those employers with a known history of violations of either the labor laws or the immigration laws. This approach could be integrated into the existing scheme of the bill by requiring the employer who receives an administrative citation to begin keeping records of employees and applicants for employment.

Where the bill now provides a fine for violation repeated after the citation, a violation of the law established from the employment records would also result in a fine. In essence this would be parallel to the plan of the bill, with the exception that there would be no duty to record applicant's citizenship documents until a citation was issued and there would be a dual "trigger" of the recording duty in that either an immigration or a labor law violation would result in a citation and order to record documents. Traditional notions of fairness require that probable cause be shown before the government proceed with prosecution. The example of the Voting Rights Act demonstrates that heightened administrative supervision of conduct can be appropriate where there is a history of misconduct. These same principles of fairness and practical enforcement efforts should apply in the proposed employer sanctions. We believe this variation on the bill merits the support of the subcommittee.

Another alternative is to provide for the "sunset" of employer sanctions, at which time a review of any resulting employment discrimination would be considered in reauthorizing the program. If employer sanctions are adopted in their



present form, we believe this review procedure would be essential to carry out the national commitment to prevent employment discrimination.

We hope that this committee will also consider provisions which would be complementary to a system of employer sanctions. Any measures which aid undocumented persons in protecting themselves from exploitation will ultimately benefit the whole community as the unfair effects of that exploitation are reduced. Among the provisions which should be considered is a grant of authority to the Attorney General to grant legalization to illegal immigrants who cooperate in the prosecution of violations of the law (immigration or criminal) in cases of egregious exploitation. This would not only aid the particular prosecutions, but would act as a general deterrent to employers or others who would know that an alien had the ability to seek such protection from the Attorney General.

We urge the Subcommittee, in its responsibilities for oversight and authorization, to carry out its commitment to effective and fair enforcement. The improvement of the service functions of the Immigration and Naturalization Service will reduce the number of cases which lapse into illegal status and the number of applicants whose frustration induces them to ignore the law. And improved training and support for the Border Patrol are urgently needed to reduce the instances of misuse of authority and maltreatment of suspected illegal entrants.

#### ASYLUM ADJUDICATION

Our several religious traditions cherish the heritage of religious freedom and the role the United States has played as a refuge from persecution. Even in the face of demands that our future role be more limited, we cannot deny to others a fair chance to have the benefits of a refuge which has allowed us our freedom. However limited a role this nation may play, we must insist that the doors remain open to those in peril of their lives. Whatever method is used to determine asylum and refugee status, it must conform to the standards of fairness we demand for ourselves. Accordingly,

we urge that provisions of this bill be considered in light of these criteria:

1. The United States must give claimants a fair chance to state their case, without showing favoritism that ignores threats of persecution by allied governments.

The United States must fulfill its moral and treaty obligations not to return any person to a country where they would face persecution. We support the provisions of the bill which provide for independent administrative law judges and an orderly appeals system. These provisions of the bill are a dramatic and commendable step toward granting to others the fairness which we demand for ourselves.

We remain concerned about the attempts to limit court review by statutory provisions, however. These efforts are particularly puzzling in view of the history of a lack of significant backlogs in the courts' review of asylum cases. Especially in view of the powers of the courts to consolidate similar cases and to refuse review of frivolous appeals we must question the need for any specific statutory provisions. We urge the committee to maintain court review of asylum cases so that the traditional role of the court system in compelling compliance with the law will be continued.

2. The procedures for asylum must be made more expeditious, and more consistent with the international nature of responsibility for refugees.

We support the adoption of time limits in which a hearing on an asylum claim must be held and a decision issued. Much of the current backlog, however, results from requiring the hearing officer to depend on a single source of information - the State Department advisory opinion. We urge that the Administrative Law Judge be permitted to employ the State Department country reports, reports by the United Nations High Commissioner for Refugees, findings of international human rights commissions, and other dependable sources. An individual request to the State Department should occur only when these sources of information are inadequate to decide the case.

The use of country and group profiles has been proposed by others, and we believe much time could be saved by authorizing the new United States Immigration Board to

provide such guidelines, based on information from the State Department and international sources. These profiles would serve to establish presumptions of eligibility and ineligibility which would save time in most cases but allow presentation of evidence in individual cases.

#### LEGALIZATION

We commend the sponsors and the members of the committee for continuing the effort to pass a legalization program. We believe that legalization is an essential part of any immigration reform package. Legalization will allow recognition of the contributions already made by millions of hard-working people to their communities, it will avoid a painful disruption of communities of which illegal residents are an integral part, and it will avoid a waste of administrative and enforcement resources.

In the current recession we are aware that many citizens are searching for a scapegoat, some group to bear the burden of sacrifice so that prosperity can be regained. Out of this has grown a desire to deport illegal immigrants, a desire which at times has a punitive aspect. We believe that this is inappropriate and harmful. While unlawful, border-crossing is not a malicious act and there can be no purpose in punishing those who sought honest work to feed their families. Provisions to deny benefits to temporary residents, such as those now contained in the bill, may gather the support of those who desire to punish illegal immigrants, but they are not justified by any notions of fairness. In addition, these provisions complicate the administration of the social service programs, adding costs that are not justified by the minimal savings realized.

We urge the simplest possible program of legalization to minimize administrative costs, encourage the participation of eligible persons, and speed the transition to a normal operation of immigration law enforcement. Churches and other voluntary agencies should not be in the position of enforcement agents in any legalization program in a manner which would undermine the trust of participants. Voluntary agencies must

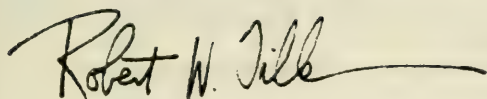
be free to advocate the cause of the petitioners for legalization to assure the fairness of proceedings where disadvantaged persons seek discretionary relief from a government with vast resources for investigation and prosecution.

Finally, with regard to cost-sharing agreements with states and localities, we urge a sensitive consideration of the moral ambiguities and administrative practicalities. It is possible that some communities will face increased costs which they cannot plan for because of the lack of information. While improved wages and working conditions resulting from legalization many also produce increased local tax revenues, the uncertainty surrounding this possibility causes governments understandable fears.

Because immigration law enforcement has been a federal responsibility, we believe that the federal government should aid the states in meeting extraordinary costs caused by the legalization of residents. While the demographic data on illegal immigrants strongly suggests that their demands for services will be lower than the average population, federal aid would be helpful to local governments which face unusual burdens, and would help to assure greater local cooperation with the legalization program. This would be beneficial both to legalization participants and to the nation.

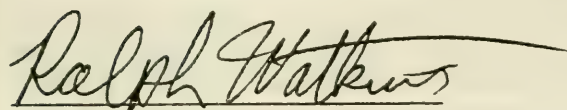
We thank the Subcommittee for this opportunity to present testimony. We genuinely appreciate the long effort in which you have engaged, your serious consideration of the conflicting interests and proposals, and the sensitivity that has been displayed toward immigrants and refugees. If we are pointed in our criticisms it is because we sense that the Subcommittee's bill is very close to satisfying our major concerns, and we urgently desire to incorporate these in the final bill. We would be happy to respond to any requests for additional information or comments.





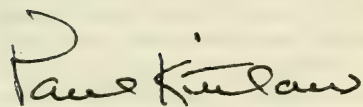

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Mr. MAZZOLI. Thank you. I congratulate you for having worked as a deputy in Geneva for the U.N. High Commissioner, for the work you have done over there.

Mr. Kohr, Mr. Howard Kohr, American Jewish Congress.

You are welcome, Mr. Kohr.

Mr. KOHR. The American Jewish Committee, for the record.

Mr. MAZZOLI. Did I say Congress?

Mr. KOHR. Thank you, Mr. Chairman, and distinguished members of the committee for giving the American Jewish Committee the opportunity to testify on this important piece of legislation.

Almost a year ago, my colleague, Hyman Bookbinder, testified before joint hearings on pending immigration legislation and paid a well-deserved tribute to Representative Mazzoli and Senator Simpson for their creative and pioneering work in putting together an immigration package which provides the basis for a fair, generous and controlled immigration policy.

Today, I want to add to that tribute by saying, Mr. Chairman, your name, as well as that of Senator Simpson, has already become hailed as historic figures in America's history of enlightened immigration policy.

Mr. MAZZOLI. I remember vividly Mr. Bookbinder when he came in last year, and I thanked him not so much for myself, but for my colleagues on the subcommittee who have labored long and hard in order to do the right thing.

We thank you for recognizing those efforts.

Mr. KOHR. That the Jewish community in America and the American Jewish Committee, in particular, maintains a sincere and real interest in the development of our Nation's immigration and refugee policy should come as no surprise.

Immigration policy is not an idle exercise for us. In a few short weeks, there is going to be an historic gathering here in Washington of some 10,000 or more survivors of the Holocaust, and as a child of parents of survivors, this event has particular emotional and symbolic meaning. The theme of this gathering is "Thank you, America."

They are coming together here in Washington, our Nation's Capital, to say thank you, America, for providing us with the opportunity to contribute to America's culture, economy and society. This gathering will be a living testimony to the positive contributions immigrants and refugees can make, and have made, to our society.

Last year, we welcomed the House Judiciary Committee's passed bill, even though we, like many of you, had some reservations over certain aspects of the bill. We remained, and still remain, neutral on the issue of employer sanctions. However, taken as a whole, as a delicate package of compromises, we believe that the act represents a major advance over previously submitted measures.

The strengths of H.R. 1510 are that it recognizes that refugee rescue is a unique segment of immigration policy and ought to be considered as a separate strand of admissions to the United States. Flexible procedures are required in order to allow us to make humanitarian responses to politically forced migration in a quick and generous fashion.

The bill recognizes the beneficial effects of present levels of legal immigration for the United States and does not seek to reduce this

flow. We feel that it is not necessary or wise to place a cap on regular flow admissions. My full statement elaborates on this point.

We support the act's reliance upon family reunification as the principal organizing principle in determining preferences for entry. This is why we support the maintenance of the second and fifth preference categories as contained in the current bill.

The act contains a number of positive proposals to deal with the serious problem of mass flows of asylum seekers in a manner that honors our responsibilities to genuine refugees and still allow us a degree of control over our admissions.

We welcome as positive the appointment of ALJ's to hear asylum cases and the ability to appeal decisions to a new, independent USIB.

Much less attractive is the provision for summary exclusion of aliens who enter without documents and do not make immediate requests for asylum. While the Frank/Rodino amendments are a step in the right direction of correcting some of the abuses, the concept of summary exclusion deserves further analysis.

Finally, the bill has several proposals that are designed to achieve a workable and equitable approach to reducing the flow of undocumented aliens into the United States and to treat in a humane and fair manner the undocumented population now in the United States.

We believe that coupled with enforcement mechanisms, a legalization program should be enacted which contains a cutoff date or dates as close as possible to the time when these provisions become law.

We are fearful that the longer the bill is under consideration, the further will be its enactment from the proposed cutoff dates for eligibility for legalization. The longer the lapse between these dates, the larger will become the segment of undocumented population unable to legitimize its status.

Mr. Chairman, a consensus is developing around the key elements of your bill. It is a fragile consensus similar to the SS reforms that recognizes that there are aspects of the legislation which none of us likes. But, taken as a whole, as a package, which is how the bill must remain, the legislation will go a long way toward creating a fair, generous and controlled immigration policy for the United States.

[The complete statement follows:]

STATEMENT OF THE AMERICAN JEWISH COMMITTEE  
ON THE  
IMMIGRATION REFORM & CONTROL ACT OF 1983  
( H.R. 1510 )

HEARINGS OF THE  
U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE  
ON  
IMMIGRATION , REFUGEES & INTERNATIONAL LAW  
OF THE  
HOUSE COMMITTEE ON THE JUDICIARY

March 14, 1983



Statement of Howard Kohr, Assistant Washington Representative  
of the American Jewish Committee, before the House Judiciary  
Subcommittee on Immigration, Refugees and International Law  
March 14, 1983

Almost a year ago, my colleague Hyman Bookbinder, testified before a joint Senate-House hearing on pending immigration legislation and paid well-deserved tribute to Senator Simpson and Representative Mazzoli for the pioneering, creative work they had started in putting together an immigration package which provided the basis for creating a fair, generous and controlled immigration policy for our nation. Today, while the American Jewish Committee expresses regret that the Congress did not complete action last year on Simpson-Mazzoli, we wish also to express our even greater sense of appreciation of what Messrs. Simpson and Mazzoli have been working so effectively and tirelessly to achieve. Their names, even before the legislation is on the nation's statute books, have already become widely hailed as historic figures in America's rich history of enlightened immigration policy.

Since its founding in 1906, the American Jewish Committee has maintained a deep and abiding interest in the development of our nation's immigration and refugee policies. We have followed closely and participated actively in discussions of every major proposal to revise our nation's admissions statutes that has been offered during the past three-quarters of a century. Throughout, we have advocated generous provisions for regular flow entry, especially for the purpose of reunifying families; vigorous efforts to rescue and provide safe haven for refugees; and firm, but fair, enforcement of our immigration laws.

For these reasons, we welcomed the Senate's passage last year of the Immigration Reform and Control Act. We did so even though we remained and still remain neutral on the issue of employer sanctions, and had reservations about several other provisions. Taken as a whole, however, we believe that the Act represented a major advance over previously submitted measures. Equally, we believe that the Senate's action constitutes a significant contribution to the process of adjusting our laws so that we may continue, in an orderly and humane fashion, to maintain our nation's traditions of welcoming immigrants who seek to join their destinies with those of the American people.

During the 97th Congress, the House of Representatives also gave preliminary consideration to a similar measure, sponsored and introduced by Congressman Romano Mazzoli. While the House was unable to complete action on the legislation before the session adjourned, we believe that the bill reported to the House by this committee, the Judiciary's Subcommittee on Immigration, Refugees and International Law and the full Judiciary Committee under the Chairmanship of Congressman Peter Rodino, contained a number of positive changes in the basic proposal which we believe ought to be approved by the House and incorporated into any legislation which the Congress enacts.

We commend both this Subcommittee, the Judiciary Committee and the Senate for their recognition and agreement that there are three distinct streams which, in combination, comprise the total numbers of newcomers who enter our nation each year. Those three streams are: refugees; regular-flow immigrants, who enter

enter according to established legal procedures; and undocumented aliens, who enter outside of those established legal procedures. Given that the measure under consideration today contains provisions which address each of these major components of our immigration stream, it successfully expresses its initiators' intent to provide our country with a comprehensive admissions policy.

#### Refugees

One of the great strengths of the Immigration Reform and Control Act is its recognition that refugee rescue is a unique segment of immigration policy and that it ought to be considered as a separate strand of admissions to the United States. In leaving refugees out of any proposed cap, the legislation acknowledges that we require flexible procedures in order to allow us to make humanitarian response to politically forced migration in a quick and generous fashion.

In previous testimony before Congress, the American Jewish Committee endorsed this affirmation of the special character of refugee rescue efforts. We are heartened to note that this provision is incorporated in the measure now being considered by this Subcommittee. We sincerely hope that the full Judiciary Committee and the House will retain it when it votes on the measure during this session.

#### Regular-Flow Admissions Numbers

Another positive feature of the Act is that it recognizes the beneficial effects of present levels of legal immigration for the United States, and therefore does not seek to reduce this flow.

In particular, we commend the Mazzoli bill (H.R. 1510) recommendations which would maintain the current process for determining the number of immigrants to be admitted annually, and which deletes a previous recommendation that would create an admissions ceiling of 425,000 entrants per year.

Furthermore, we support the current proposal's recommendation to eliminate any cap on regular-flow admission of immediate relatives of U.S. citizens. While the number of immediate relatives of U.S. citizens, a category of entrants which is exempt from numerical ceilings under present law, has been growing slowly in recent years, we believe that this rise is mild and predictable, and lends itself to planning efforts to deal with it. Moreover, these newcomers, like those who enter through the limited-preference categories, come to join relatives in the United States or to take advantage of job offers. Thus, they are aided by their families or employers in making a quick and positive adjustment to their new environment. Therefore, contrary to the fears expressed by some concerning other streams of inflow, current family immigration takes place within a context of built-in support systems which make this flow manageable.

Caps upon both total regular-flow and immediate relative entry would present a number of additional problems were they enacted. Since immediate relatives of U.S. citizens would get first choice for all available admission places, their numbers would take up many of the family preference visas provided for within the total number of entrants to be admitted each year. The result would be to leave an inadequate number of visas that could be utilized for purposes of other types of family reunification. This, in



turn, would further increase the already large backlogs in the limited preference categories.

In our view, therefore, the elimination of the caps, would not only not add significantly to levels of entry, but would also serve to further the aim of this legislation with respect to preserving the beneficial effects of continued generous and predictable numbers of legal immigrants.

In addition, we continue to support a provision in the initial version of the Act, but eliminated in the current bill, that provided for the doubling of admissions quotas for Mexico and Canada, to 40,000 visas each, as an additional class of entry slots that would not be charged against the overall ceiling for annual entry. We believe that this addition would help us to relieve some of the demand for immigration from our contiguous neighboring nations; give credibility to other measures designed to control illegal entry from these areas; all without taking places away from prospective immigrants from other locations.

#### Preferences

We support the Act's reliance upon family unification as the principal organizing principle in determining preferences for entry. To continue this emphasis on family is, we believe, both humanitarian and socially beneficial, since it guarantees that new-comers will be received by relatives who will aid them through the transition period of adjusting and integrating into American society.

For these reasons, we favor the maintenance of the current second and fifth preference categories.

With respect to the second preference, we note with gratifi-

cation that H.R. 1510 has recommended that this provision in the current law which concerns entry of spouses and unmarried children of permanent resident aliens be retained with no changes.

With respect to the fifth preference, which provides entry visas for brothers and sisters of U.S. citizens, we are again gratified that H.R. 1510 recommended no change in the current system. Retention of this preference preserves immigration places for relatives who are considered extremely close family members in many of the cultures currently represented in our entry streams. In addition, since significant flows of siblings tend to come from specific countries, continuity in this channel for entry guarantees diversity in our sources of newcomers and preserves the universal character of our nation's admissions policy. The resulting pluralism benefits our country greatly.

Finally, we wish to note that were Congress to enact changes in these preferences as currently structured it might transmit unintended signals concerning our Nation's continued commitment to internationally recognized standards of human rights observance and humanitarian obligations expressed in the Helsinki Final Act of 1975. In that document, the signatory nations, of which the United States of course is one, agreed to "deal in a positive and humanitarian spirit with the applications of persons who wish to be reunited with members of their family." While the Final Act does not contain a common definition of the term "family," for the purpose of encouraging more liberal emigration policies in the Soviet Union and Warsaw Pact nations, our Nation, along with our Western allies, has interpreted the term in a very broad sense to include siblings and adult sons and daughters, as well as grand-

parents, aunts, uncles and even cousins. To the degree that modifications are made in the second and fifth visa preference categories, such changes will run counter to the letter and spirit of the Helsinki Final Act.

### Asylum

A pressing problem that the United States has faced in recent years has been how to deal with mass flows of asylum seekers in a fashion that honors our responsibilities to genuine refugees and still allows us a degree of control over admissions. In addressing these questions, the Act contains some positive proposals. It also contains some weaknesses.

We welcome as positive the current proposals to appoint specially trained administrative law judges to hear asylum cases, and to provide for appeals of their decisions to a new U.S. Immigration Board. A key feature of this proposal is that it would be an independent system, outside of the Immigration and Naturalization Service and not subject to the Attorney General's review. Since USIB members would be appointed to six-year terms by the President, their tenure in office will overlap that of the administration that appoints them. All of these provisions will serve to guarantee the independence necessary to assure the credibility of the system.

Much less attractive is the bill's provision for summary exclusion of aliens who enter without documents and do not make immediate requests for asylum. First, many of the people who might be subject to this procedure might have legitimate grounds for seeking asylum, but they may be insufficiently familiar with the formal procedures set forth in the Act governing requests for asylum.

Second, the concept of summary procedures may open the door to abuses against guarantees of due process and fair hearings. We make positive note that the current measure, reflecting the inclusion of the Frank amendment to last year's bill, addresses some of these concerns by providing, in similar circumstances, that an immigration officer inform an alien of the right to request a hearing before an administrative law judge for a redetermination of a judgment of summary exclusion.

#### Amnesty and Legalization

Finally, several of the Act's proposals are designed to formulate a workable and equitable approach to reducing the flow of undocumented aliens into the United States, and to treat in a fair and humane manner the undocumented population now in the United States.

One of these proposals would offer amnesty to undocumented aliens who entered the country illegally prior to certain dates. Those who entered before January 1, 1977 would be granted permanent residence status, and those who entered before January 1, 1980 would be granted temporary residence status. We support the basic intent of these proposals as being generous and constructive. They will obviate the prospect of large-scale deportations, with their consequent disruptions for the communities and industries in which many of these aliens have successfully integrated themselves since entering the country. Moreover, they will allow us to concentrate enforcement resources more effectively upon persons who have entered the country illegally after the amnesty dates adopted, as well as on those outside the country who continue to seek to



enter illegally.

We must also pay close attention to the date of enactment of this legislation. The longer the Act is under consideration, the further will be its enactment from the proposed 1977 and 1980 cutoff dates for eligibility for legalization. The greater the lapse of time between these dates, the larger will become the segment of the undocumented population unable to legitimize its status. As that segment grows, the effectiveness of this proposal will diminish. Therefore, we believe that, coupled with enforcement measures, a legalization program should be enacted which contains a cutoff date or dates as close as possible to the time when these provisions become law.

#### Conclusion

The major accomplishment with which the sponsors of this measure should be credited is the fact that they have produced a bill that has created a consensus on behalf of its passage among a wide variety of Americans whose interests reflect the ethnic diversity and pluralism of which our country is justifiably proud. This is no small accomplishment. But consensus is often a fragile thing. In the case of this bill, the consensus of support behind it may be shattered if, when it reaches its final form, those who look favorably upon reform of our immigration codes have reservations concerning the generosity and fairness of its provisions regarding admissions numbers, due process, legalization and amnesty, and enforcement procedures.

The American Jewish Committee endorses many of the provisions contained in the proposed Immigration Reform and Control Act. We also have some reservations concerning certain aspects of the bill, and we have attempted to address our reservations with recommendations. We believe that if these concerns are addressed as the Act is being considered, we will indeed have gone a long way toward creating a fair, generous, and controlled immigration policy for the United States.

Mr. MAZZOLI. This is one group, and I will have to say that publicly, the committee has been with the bill and worked for it for these past 2 years, and we thank you for pointing out its shortcomings and defects, but, in a positive way, saying that this represents a significant step forward and is much better than anything that seems to be in the offing, and we thank you.

Now, it is a great pleasure and honor to have with us the Washington representative and the executive director of the NAACP.

Mrs. SIMMONS. We certainly commend the chairman for the leadership he has shown in trying to get a fair, equitable measure.

The NAACP has not changed its position since I was here the last time, nor since we testified on the Select Commission's report.

The NAACP believes that we must have employer sanctions. There are about 12 million American workers who are officially unemployed. Black unemployment exceeds 20 percent, and black youth unemployment has been over 50 percent for over a year.

We do know, based on information that has come in from our branches in the urban and innercities, that undocumented workers do take jobs from American citizens.

We support the provision of 1510 with regard to employer sanctions. We have some concern, as we reiterated last time, about the verification procedure. We would certainly hope that any verification procedure would be one that would actually have congressional consent; we oppose a green card, or any kind of card that can be used to discriminate against individuals.

We support, also, the provision that requires the President to consult the Congress every 6 months on the changes or additions to the verification system.

We support the concept of an independent agency such as the U.S. Immigration Board, and the ALJ system.

We would certainly hope, as you move through the committee process and go into conference, we do believe you will get that far, you will retain this provision of the Immigration Board as an independent body.

I say this because last week, when I testified on the Senate side, they did take out the independence and made the Board an arm of the Justice Department. We oppose that move. We have grave concern about H-2 workers. We think that until Americans are fully employed, the H-2 program should not be expanded. We believe that if the H-2 program is expanded, that employers will have a possibility of trying to utilize H-2 workers instead of using workers who are already here in this country.

Legalization. We oppose the establishment of further classes of citizens as subclasses. We believe illegal aliens should be granted blanket amnesty and be fully integrated into the mainstream, with all the rights, responsibilities, burdens, and benefits of residence.

We would oppose any limitations on judicial review. We think people ought to have the opportunity to appear before the courts, and when you talk in terms of the possibility of them not being able to appear in a court of law, until after they have reached the point where they are going to be denied an opportunity to stay in this country, we think that that puts an undue hardship on individuals who are left in a state of anxiety over whether or not their status is going to be one of resident or nonresident.

In some instances, there are a number of persons who are not even certain the wheels of justice are grinding, much less if they are in motion.

To sum it up, Mr. Chairman, we support employer sanctions, the Immigration Board as an independent agency. We oppose expansion of the H-2 workers program. We support legalization, and judicial review. We believe that blanket amnesty is necessary.

Thank you for letting me testify on behalf of our 400,000 members.

[The complete statement follows:]



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STATEMENT  
OF  
ALTHEA T. L. SIMMONS  
DIRECTOR, WASHINGTON BUREAU  
OF THE  
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE  
BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION AND REFUGEES AND INTERNATIONAL LAW  
OF THE  
HOUSE JUDICIARY COMMITTEE  
ON  
H.R. 1510, THE IMMIGRATION REFORM AND CONTROL ACT OF 1983  
MARCH 14, 1983



MR. CHAIRMAN and Members of the Committee, I am Althea T. L. Simmons, Director of the Washington Bureau of the NAACP. I appreciate this opportunity to testify today on behalf of our 1,800 branches, youth units and state conferences.

The NAACP has long been interested in the issue of immigration. We appeared before congressional subcommittees in both Houses as early as 1953 calling for a revision of the McCarran-Walter Act. We commented on portions of the Report of the Select Commission on Immigration and Refugee Policy in 1981 and have testified in both the Senate and the House on immigration reform.

Before addressing specific provisions of proposed immigration reform, I would like to outline the Association's general position on immigration. As an organization, the NAACP is totally committed to a pluralistic society and to working for the removal of all barriers of racial discrimination through democratic processes. We have identified with disadvantaged persons of all races, colors and creeds since the Association's founding 74 years ago. We believe that immigration is now and has been good for America and that immigration should continue. Refugees have generally been welcome to enter our shores as attested by the inscription of welcome on the Statute of Liberty -- "Give me your tired, the poor..." -- words known to all of us. The Chairman and Members of this subcommittee are to be commended for undertaking this herculean but necessary undertaking. We urge you, as you deliberate, to use all the expertise and compassion at your command to insure that reform legislation contain safeguards that are fair and equitable.

The NAACP has long been interested in the issue of immigration and we concur with the subcommittee that reform of the laws governing immigration is necessary. Our position remains unchanged on the need to insure that persons coming to our shores should not be discriminated against. In 1953 the NAACP called for a revision of the McCarran-Walter Act because it discriminated against people of color by virtually eliminating immigration from the Caribbean countries. It discriminated against descendants of Asiatics by charging those of half oriental parentage to oriental quotas regardless of the country of their birth. We urged the elimination of the

national origin quota system and other racist-based provisions and called for liberalization of procedures in accordance with fair and equal treatment for all immigrants and prospective immigrants. I recite this to point up the NAACP's long-standing interest in the area being considered at this hearing.

I will comment on employer sanctions, the U.S. Immigration Board, Judicial review, asylum and H-2 workers.

#### Employer Sanctions

I believe we will all agree that our country must do something now about controlling the number of new entrants to America. The NAACP has no magic formula regarding the number of additional persons our country can absorb given an admitted limitation of natural and other resources, and our own population growth. We are certain that the Congress with its vast resources has the expertise to address that issue.

The NAACP is of the opinion that a vital part of control is to impose sanctions against employers who knowingly employ undocumented workers. Unless strong measures are taken against those who violate the law it will be not just a herculean, but an impossible, task to effect immigration reform.

The NAACP has an understandable concern regarding the impact of undocumented workers on unskilled and/or disadvantaged American workers. This concern was addressed in 1977 at the NAACP's 68th Annual National Convention meeting in St. Louis when convention delegates adopted the following statement of policy:

"WHEREAS, the NAACP is concerned about the effect of employment of illegal aliens on employment opportunities of black citizens in these United States; and

WHEREAS, legislation has been introduced in the Congress to curb the employment of such aliens; and

WHEREAS, the proposed legislation raised serious problems of civil rights as well as civil liberties, including the use of identity cards for all citizens; and

WHEREAS, the proposed use of such identity cards is fraught with dangers of abuse of official powers,

THEREFORE BE IT RESOLVED, that the NAACP in Convention assembled, direct the chairperson, Executive Director, and its National Board of Directors to advise the President of the United States, the Congress, and through them all appropriate departments, agencies, corporations, businesses and individuals, of its grave concerns relating to illegal aliens, their unlawful employment and the need for assurance of full observation of the civil rights of all U.S. citizens when legislation is drafted to deal with this problem.

BE IT FURTHER RESOLVED, that the President and the Congress, through the passage and enactment of proper legislation call for the immediate cessation of the employment and use of all illegal aliens.

AND BE IT FINALLY RESOLVED, that the President and the Congress approve of the levying of still monetary and/or imprisonment penalties to be imposed on all persons, businesses and/or groups and organizations found to be guilty of violations of the employment and use of illegal aliens."

Presently there are about 12 million American workers who are officially unemployed. Black unemployment exceeds 20% and black youth unemployment has hovered near 50% for more than a year. Although, we are told that there is a break in the recession, black Americans, particularly at the low-income and poverty levels are still in the grips of a depression-like state. We know from information received from our branches, particularly in large cities, where there is a concentration of black poor -- youth and adults -- that the continued influx of undocumented workers has a disparate impact on blacks, many of whom, are marginally employed or unemployed. Many blacks are forced from employment rolls by the undocumented worker who is usually hired at a subminimum wage and without the protection of organized labor.

Mr. Chairman and Members of the subcommittee, our country must control the number of immigrants admitted to this country on a fair and equitable basis. In many cities, including the District of Columbia, jobs once held by unskilled black Americans are now being held by others.

We support the provision in H.R. 1510 regarding employer sanctions. We believe it is fair and is designed to penalize the employer who knowingly and/or repeatedly violates the law not the employer who unwillingly finds that he/she has violated the law.

The NAACP still feels a bit uneasy regarding the provision in the bill regarding the establishment and implementation of a secure system to determine employment eligibility, we would urge the Committee to speak with as much specificity as possible regarding the type of secure system of verification procedures. The verification issue is fraught with controversy regarding civil rights and civil liberties that it should not be an administrative decision subject to the rise and fall of political tides.

We support the provision which requires the President to consult with the Congress every six-months on any changes and/or additions to the verification system. I suppose that this provision may well be the necessary factor in keeping before the Congress any possibility, however remote, of the institutionalization of a "green card" or any other identity card which carries with it a potential negative stigma.

United States Immigration Board and the Establishment  
of  
Administrative Law Judge System

The NAACP supports the concept of an independent agency such as the entity proposed in Sec. 122 of the bill. We hope that the Subcommittee and the full Committee will retain that provision intact. I raise this issue because the measure in the Senate provide for a Board and judges as an "arm" of the U.S. Department of Justice rather than a judicial body subject to senatorial confirmation. The NAACP believes that there is a need for a fully independent arbiter in asylum decisions where substantial foreign policy considerations are involved and where the State Department's rule is often dispositive of the outcome.

Temporary Agricultural "H-2" Worker Programs

The NAACP still has strong objections to any expansion of the "H-2" program. Years ago we opposed the notorious bracero program. We also believe that strict monitoring is essential to insure that the current program is not misused. We have no "sure-fire" mechanism to ensure that guest workers leave the United States at the end of a duly certified time period. Their continued presence increases illegal immigration and exacerbates an already hard to manage immigration problem. It is the NAACP's position that there is an ample supply of workers available in this country now with some 12 million idle American workers. The addition of guest workers could create a glut further jeopardizing employment opportunities for residents and opening up increased opportunities for exploitation of workers with limited rights. In sum, the NAACP opposes the importation of any new workers until our resident unemployed are gainfully employed.



Legalization

The NAACP supports an amnesty program for the undocumented workers currently in this country. We voice our concern regarding the fate of persons who entered the United States post-1977 and/or the Haitian-Cuban entrants who postdate October 10, 1980. It is our view that the 1977 date in the bill should be updated to the date of enactment so as to cover the Haitian refugees who entered the U.S. after 1977. This would avoid the creation of a large subclass of people who entered after that date and who would be subject to employer exploitation.

The NAACP opposes the establishment of further classes of citizens and therefore believes that illegal aliens should be granted blanket amnesty and thereafter fully integrated into the mainstream, with all the rights, responsibilities, burdens and benefits of residents.

Judicial Review

The NAACP opposes limitations on judicial review. H.R. 1510 limits the jurisdiction of the court to review whether the jurisdiction of the administrative law judge or the United States Immigration Board was properly exercised; whether the asylum determination was made in accordance with applicable laws and regulations, the constitutionality of the laws and regulations pursuant to which the determination was made, and whether the decision was arbitrary or capricious. While we note with approval that the bill proposes reform of the present system of judicial review of final orders of exclusion and asylum, the NAACP is concerned that there can be no judicial review of any aspect of the asylum process until a final order of deportation or exclusion is entered by the Immigration Board.

We are certain that the sponsor(s) of the legislation and the Committee considered the extra burden on the court of allowing access to the courts pre-final order; however, the NAACP raises the issue of possible inaction by the service and other inordinate delay in the process before the prospective resident could be relieved of the anguish of uncertainty regarding his/her status. The NAACP has been apprised of instances wherein the wheels grind slowly without the beneficiary being aware that such wheels are even in motion.

The NAACP believes that access to the courts is vital to our democratic system and urge the Committee to give some consideration to removing that limitation.

Mr. Chariman, the NAACP commends the Committee for taking steps to reform the Immigration laws of this country and allowing our views to be heard.

Thank you.

Mr. MAZZOLI. Thank you for being so willing to boil down the length of your statements to 5 minutes.

Let the Chair yield itself 5 minutes to begin a round of questions.

Last year, we were in the peculiar position of having people fight to keep this bill from coming to the floor, not because it was a bad bill, but because they were afraid that it would not be reconciled correctly with the Senate version which they said was bad.

Now, I don't know whether any of you were in that posture or not, but we would hope that you can give us a chance to get this bill onto the floor and into conference. Then if it comes back with some defects, it can be defeated at that point.

If we don't have an opportunity to go forward, because of what the Senate has done, then, of course, we will not have a conference. So, let me just hope that you will continue to give this bill a chance on its own merits and not on the basis of what the Senate bill might be.

To go back what my friend and mentor, Father Hesburg, said, unless we close the back door to get some control over the undocumented entry of people, we are going to see the front door close.

It is through that door that the Jews and Italians and a lot of other people have come. We are trying to get control of undocumented entry in order not to lose the front door, which is the way the country has been strengthened and refreshed.

Do you agree that that is the general spirit of what we are doing here, trying to preserve the generous admissions policy that this country has offered to peoples of the world for many years?

Mr. KOHR. Yes, Mr. Chairman, we agree with that statement as we have been members of our organization that have worked on the Selection Commission, and that sentiment is something that concerns the American Jewish Committee, as well as the Jewish community in general, and that is one of the reasons why we have testified so positively with the reservations that we have but positive on the whole for the package.

Mr. MAZZOLI. Let me pose this one question. The earlier panel said the only way it could accept a legalization program is by moving the registry date. Those people who entered this country illegally since 1973 will either go back home or be caught and deported. Would each of you, with what little time is remaining to me, address the issue. Does changing the registry date to 1973 solve the problem posed by the presence in this country of people who have come here to answer want ads and do jobs?

Mrs. SIMMONS. I think that the date is unrealistic. We believe you should not pick an arbitrary date like that. The NAACP supports using the date that the measure becomes law as the registry date. There is no way that America can get by with trying to deport large numbers of persons who have entered this country. It is inhumane and un-American in our way of thinking, so we would suggest use of whatever date the bill becomes a law.

Mr. MAZZOLI. A legalization program separate and apart from raising the registry date?

Mrs. SIMMONS. Yes.

Mr. DE HAAN. On this issue which has been around here for many, many years, we have to bite the bullet on this finally. We

should try and clean it up as much as we can, and the date should be very, very current and not discriminatory in its application.

I think if we talk about registry dates in 1973, 1974, and so forth, there will still be a lot of people who are going to be sitting out there in this subclass which we have in our society, festering away. There will be some attrition surely, there will be some of that.

We would have to face, then, the question of mass deportations and morally we cannot face that question.

Mr. MAZZOLI. You can't just update the registry date and solve the problems?

Mr. DE HAAN. Could I add, I think that the question of undocumented aliens in this country is such a difficult problem and such a complex problem, it is misunderstood. We are not explaining it across the country. We are not talking here about legal immigrants, but people who have come in here illegally.

This is the kind of a program which ought to be treated in a separate kind of a way quite apart from registry dates in the immigration law and so forth.

Mr. MAZZOLI. Mr. Kohr, do you believe updating the registry is an answer to the problem alone, or should it be supplemented with the legalization program?

Mr. KOHR. I want to concur with the remarks of Mr. de Haan, which is very similar to our position, you need to look at the legalization program as well.

Mr. MAZZOLI. My time has expired.

The gentleman from Texas is recognized.

Mr. HALL. I assume all three of the witnesses have read in the media lately that because this bill contains an amnesty provision that thousands of illegal aliens from Mexico are crossing the border hoping that they can come under the provision of this law.

Do you think that those people who come in under that guise up until the bill is signed by the President should be covered, those that came strictly for that purpose?

Mrs. SIMMONS. How are you going to identify those that came in for that purpose or those that came in legitimately to work? That is going to be a problem. There is going to have to be a better method of border patrol enforcement, but I don't see how you can identify those who came to work from those who came for amnesty. You would not be able to separate A's from B's.

Mr. HALL. Mr. Kohr, you say that your group takes no position on employer sanctions.

Mr. KOHR. We have had extensive debates throughout our chapters throughout the country, as well as among our national officers, last May, and the committee on a vote on the issue was literally evenly divided, much as the way the people on the subcommittee are evenly divided.

There were those that thought it was part of the legalization program, it was a necessity. Those on the other side said this presented some serious discriminatory effects.

We cannot take a position, because we remain divided on the issue.

Mr. HALL. Do you think we can pass an immigration law without employer sanctions?



Mr. KOHR. The reason we came out in the end when the bill was on the floor in support of the package, because we recognize, even though we have problems with employer sanctions or had no position on it, the fact that this was a package of compromises, that you had to give and take here a little, that we were willing to support the bill which included employer sanctions.

Mr. HALL. Would you support one without employer sanctions?

Mr. KOHR. Once again, we would have to look at the package of compromises that were involved when the bill came to the floor.

Mr. HALL. All right, Mrs. Simmons, I understood your testimony on the employer sanctions. Do you believe that we will continue in the future (if we used your date of amnesty as of the date that the President signs this law) to additional periods of amnesty that will have to be granted.

Mrs. SIMMONS. I think that if, for example, we not only set the date but also are realistic about enforcement of the law, that we should not have to take a look at further amnesty in the foreseeable future, but I do think everything is going to revolve around whether or not we are going to pass a law with some commitment toward trying to insure that we maintain our borders.

Mr. HALL. Is it an inconsistent position, and I am not speaking of you certainly, but we have had testimony from people who say that the absence of employer sanctions creates a problem on hiring in the United States.

We also hear the same people state that granting of amnesty is necessary. Isn't there an inconsistency there, if employer sanctions are not in place, and that is causing problems with minorities, or with people who are not getting the work that they say they are entitled to have, how is a grant of general amnesty going to in any way alleviate that problem?

Because you are just saying to these millions of people who are said to be legal by a stroke of the pen, aren't we having the same problem with those people who have not gotten those jobs before magnified by declaring that all of these people now are legal. How is that not an inconsistent position?

Mrs. SIMMONS. It is not exacerbated by the fact that there are others coming in. There will have to be a period where we have to shake down, so to speak, and my organization, which believes in raising the level of opportunity for minorities takes the position that in the initial period when you are trying to get control of our borders and trying to have a realistic kind of immigration policy, that you have to have a little give and take, and we don't see that as being entirely inconsistent.

We see that as actually taking advantage of what America has to offer, and then trying to start from a position where we can move forth and try and control the number of persons who come into our country with some degree of effectiveness.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida.

Mr. McCOLLUM. I can't resist initially commending you, Mr. de Haan and Mrs. Simmons both, to the witnesses that preceded you. All of us have reiterated time and time again, we do not believe in mass deportations. We would not advocate that they occur or push



for them in the case where there were no legalization or no amnesty.

Our concern is with the magnetic effect that we perceive would occur if the legalization is granted up to the date presently here. After all, we are dealing with individuals who have developed ties here, many substantially so, and have basically burned their bridges with their homelands.

Of course, that would be true of those before 1973 and 1975, but I have been to the borders with this subcommittee, and I have talked with many who are coming across and have been here before, going back again, and most of the more current ones do not have these ties, and we would be addressing the tie-type people with moving up the registry date.

Mr. KOHR, the backlog in the preference is about 700,000 right now. That is an enormous number. We are concerned on this committee with the fact that we don't have an opportunity for seed immigrants or investor category people who don't have a relative to get over here at all under the present system.

We are also concerned with the inordinate waiting period, and what that does to those who fall in this fifth category. Isn't it difficult from a standpoint of policy for us to continue with a provision in this law to foreclose for the future ever having a seed immigrant, and isn't it also inhumane to make these people of 700,000 wait?

Mr. KOHR. Backlog, there is no question that it is troublesome to us. However, we feel as a principle that family reunification, in this case, to brothers and sisters are important to cultures in the United States, including the Jewish culture, if you will.

In addition, even though we don't like to see the backlog, a case can be made that the fact that backlog exists, there is a mechanism in place at the moment to restrict the flow of the fifth preference.

Mr. McCOLLUM. You don't have a problem with the fact that we would not have seed immigrants. You prefer to continue family reunification rather than have any seed immigrants?

Mr. KOHR. We hope we can be as generous as we possibly can. However, realizing there are decisions that have to be made, we think family reunification is one of the fundamental principles.

Mr. McCOLLUM. I am just trying to get a dialog about the problems we have here because we do have a cap of sorts and these tough decisions, and I wanted to be sure you understood where we are coming from, and why those decisions are tough.

A few days ago, Father Hesburg testified before us on the subject of asylum and adjudications, and before that, Congressman Fauntroy also gave us some testimony, Mr. de Haan and Mrs. Simmons. In relationship to responses that we have elicited from others, Father Hesburg said while he likes the provisions in this bill with regard to helping speed up the adjudication process, recognizing, if I can paraphrase, the concerns over civil liberties and the individual rights of those involved in the asylum process, he still personally prefers what he voted for in the Select Commission, to provide an initial court opportunity for asylum applicants rather than the procedures in the bill, even though they are far better than what we have today.

I would like for you to comment on whether or not your organizations, while perhaps supporting some of the provisions of this bill in this regard, would not have the concerns which both of you express today over civil liberties better addressed if we were to go to an article I for this process?

Mr. DE HAAN. I think that questions of judicial review and access to the courts are extremely important, but also in the context of implementing the immigration law, there should be some framework established within the executive branch to deal with the asylum question.

More often than not these are administrative questions rather than legal questions. It is a question of national policy of any given President. What the committee is trying to do in the context of the bill is extremely important because it is giving a framework in which to operate.

Mr. McCOLLUM. You see no need for a totally independent person from the Department of Justice or the executive branch in making these asylum decisions?

Mr. DE HAAN. I think the administrative court should be independent. As our statement points out with respect to submitting evidence, we would also favor the creation of an advisory panel or committee, so we try to minimize the—

Mr. McCOLLUM. Could I ask Mrs. Simmons to answer that?

Mr. MAZZOLI. Yes.

Mrs. SIMMONS. Yes, we much prefer the provisions in the bill that talk about the board. With reference to it being strictly administrative, we have some problems with that. Take the Haitian refugees, for example they have suffered tremendous difficulties in the past couple of years, as a result of actions taken by administrative agencies.

The whole interdiction policy; the policy, for example, or procedures of letting persons in and try to assist the refugee persons who were there, getting into the camps to give them legal assistance, pose all kinds of problems. In addition to that, in dealing with the State Department where they make decisions based on whether a person is a political or economic refugee we have tremendous problems with that so relates to the Haitians.

Mr. McCOLLUM. You have tremendous problems with the present system. You prefer what is in the bill. Would you prefer an independent court?

Mrs. SIMMONS. We have no problem with an independent court—article I, not article III.

Mr. MAZZOLI. The gentleman from Florida, Mr. Smith, is recognized for 5 minutes.

Mr. SMITH. Yesterday in Miami, there was another riot in Liberty City, some 18 or 19 people arrested, and there was a disturbance, police came in and broke up a street party of some kind.

In that area, there apparently is some specificity in the large number of unemployed black youth with in fact a large number of refugees who have come over the last few years in Florida, and I am very concerned about that, like you are. It is one of the areas where you could point out, especially the impact on the American job seeker in terms of that problem.



My question is, however, what can we do about it in terms of the short range? If we are to grant amnesty for legalization process with a cutoff date as of the time that possibly the bill is signed or some day close to that, won't we be locking in this unemployment situation until the numbers have time to rearrange themselves?

Won't we then be dealing with in a situation where we may be putting people out of work who are already going to be grandfathered into this country and have a situation where when those American, native American born jobseekers get back the jobs we then put people on the social welfare programs, because they can't get the jobs?

Mrs. SIMMONS. For a short time, of course, you will have that problem. However, the Miami situation, Mr. Smith, is one that we forecasted 10 years ago to the mayor of the city and suggested some solutions, including going back, reading the Kerner Commission report and putting some of those recommendations into operation.

I think that there is an advantage to trying to grandfather in the persons who are there, and then trying to make our immigration policy work. Actually it is better to do that than to try and have the policy that we now have which discriminates against individuals. In my testimony we did raise the issue of having an antidiscrimination policy in the immigration policy, because that has been a tremendous problem for dark-skinned people for over 30 years.

Mr. SMITH. You are probably going to wind up with a discrimination factor built in. If we are going to put black youths in jobs that are now held by Haitian refugees, we will discriminate against Haitian refugees, because they will be thrown out of work in terms of having other people put back to work.

Mrs. SIMMONS. We need more job creation.

Mr. SMITH. You would be in favor of increasing the budgetary requirements that the United States would have for the purpose of putting people back to work, and for the purpose of enforcing the immigration policy once we have indicated to the world what it is?

Mrs. SIMMONS. That is correct, Mr. Smith.

Mr. SMITH. Would you agree that the administration at the present time has not done either of those two things?

Mrs. SIMMONS. That is correct.

Mr. SMITH. Mr. Kohr, part of your testimony deals with an additional class of entry slots not charged against the overall ceiling for annual entry places like Mexico and/or countries like Mexico and Canada where there is apparently this push factor that exists, that probably all of Latin America and the Caribbean, where those push factors exist.

How would you justify that in light of the testimony given by the first panel when it comes to the point of going over the 425,000, what they consider to be the means quota, that number they all agreed upon which was more or less that magic number which would bring peace, harmony and contentment and ultimate U.S. policy to the utopia that Representative Hall referred to?

Mr. KOHR. Well, two points, and the first of which is we are not as concerned about the numbers and the total numbers of legal immigrants and refugees into this country. We think it is predictable and it is the kind of thing that we can plan for and we are not

overly concerned with those numbers. America has proven its resiliency in the past in absorbing people and having them contribute to society.

The second point on the Mexico and Canada numbers, how do you dampen the demand for people coming into the United States and particularly on countries that have contiguous borders, and we feel by allocating those extra slots, particularly into Mexico and Canada, it would be one of the steps necessary to allow a predictable flow of immigration from Mexico.

Mr. SMITH. That 20,000 additional slots probably represents 1 month's worth of undocumented workers coming across the borders.

Mr. KOHR. I would agree with you restatement of increasing the budgetary requirements in terms of enforcement and the other mechanisms that are required.

Mr. MAZZOLI. The gentleman's time has expired. Thank you very much.

The chair will yield itself 5 minutes for a second round of questions.

Father Hesburg espouses the creation of a "seed immigrant" category, people without family in the United States and without highly sought job skills. What do you think of that idea?

Mr. DE HAAN. I would comment, Mr. Chairman.

I think that the question of new seed immigration is very important, and anything that you and the committee can do in this regard I think would get widespread support among the voluntary agencies. We aren't overly concerned about numbers, as Mr. Kohr was saying a moment ago, but I think that this new seed question is an important one. We would support any efforts in this regard.

Mr. MAZZOLI. Mr. Kohr, if we left the immediate family out of a cap but provided that if it grew beyond a certain percentage each year the excess would be mortgaged against other numbers, would we be making a mistake? You see anything from that, Mr. Kohr?

Mr. KOHR. We would have to examine the exact proposal before we could give any decision. I would like to come back again though to the question of the numbers and the preoccupation with final numbers.

I think it is our feeling that we ought not be overly concerned, yes, we should be concerned but not overly concerned and allow that to make policy decisions that we might not otherwise care to make. A question that I ask myself is, what would be the limits on some of the preferences, and that to a certain extent as I have mentioned earlier we would be concerned with some of those restrictions.

Mr. MAZZOLI. Mr. De Haan, you talked about the sunset as one way to protect against perhaps unwitting problems with employer sanctions. When would you sunset it? In 5 or 6 years?

Mr. DE HAAN. I think in light of our lack of experience with sanctions and in light of the experiences of other countries in the world, it seems to us that this, perhaps, is one alternative that could put to rest some of the argumentation and debate over the question of sanctions. But whether 5 or 6 years, we don't have a view on that.



Ms. SIMMONS. We haven't thought in terms of sunseting. The NAACP has problems with sunseting civil rights laws. Off the top of my head I am sure we would have some problems with that.

Mr. MAZZOLI. I understand. Thank you very much, Mr. De Haan.

You mentioned that the voluntary agencies which would be involved in the implementation of legalization have to be sure that they are separate, apart, independent, and free of any pressures, unintended perhaps, of the Immigration Service.

Are you familiar with their new guidelines and their new plan for implementation, and, if so, do you have some feeling on whether that guarantees the kind of independence you think you have to have?

Mr. DE HAAN. Well, Mr. Chairman, I am aware of a new model with respect to the role of the volunteer agencies. It has been summarized for me and for others——

Mr. MAZZOLI. By the Immigration Service?

Mr. DE HAAN. Yes.

Mr. MAZZOLI. You have seen that slide show?

Mr. DE HAAN. I haven't seen that or the paper on it, but it has been described to me INS wants to work with us further. It appears to me based on what they have told us that perhaps the model is better than before, but I think the point here is that the model must protect the advocacy function of the volunteer agency vis-a-vis its client. We cannot be a quasi-governmental agency, an enforcement arm of the Government, because we have clients; we have other responsibilities. We don't mind getting involved in the program, but we cannot be policemen.

Mr. MAZZOLI. When I saw the slide show, I didn't see much enforcement on your part. If I understood it correctly, there would be no INS person on the premise. You would know the law and the waivers available and you would examine their papers and tell them if anything was missing or if they appear eligible.

If they qualify, you send them on and if they don't you don't have to send any name forward. So the INS would never know that you have been in touch with those people.

Mr. DE HAAN. One of our major objections had to do with the INS presence on the premises. I understand that has been changed.

Mr. MAZZOLI. If you saw the slide show I saw you would know that they are not on the premise.

Mr. KOHR. I have seen the slide show, and some of Mr. De Haan's concerns are I think legitimate.

Mr. MAZZOLI. They are legitimate, but it also ought to be said that the INS should be congratulated for having made a serious effort to implement this thing objectively. I think it represents a good faith effort on their part to make sure the legalization works.

One of the concerns is, you are going to give us a hip and take a hip away. It's going to be some kind of a ruse to find and deport undocumented aliens.

Mr. DE HAAN. Mr. Chairman, I think that compared to the point where we started out some time ago, things have improved.

Mr. MAZZOLI. My time has expired.

The gentleman from Texas is recognized for 5 minutes.

Mr. HALL. Thank you, Mr. Chairman.

I take it that all three of the participants in this panel are opposed, maybe some more strongly than others, to a guest worker program. I think it fair to say, as far as I am personally concerned, you will never get a bill passed unless you have a strictly construed, regulated guest worker program in this bill.

I say that for this reason: There are certain areas in the United States where regardless of whether you agree with it or not, it is difficult to get people to work in certain types of jobs. That has been proven.

I can show areas where employers have resorted to television, newspapers, interviews, one-on-one interviews through the employment agencies, trying to get people to work, paying these people \$7.50 an hour, all instances a dollar and a half above minimum wage, with all the benefits attuned thereto, and that it has been impossible to get people to do that type work that these folks are seeking to obtain.

And I think that a guest worker program is necessary in some instances where it will be strictly observed and strictly administered through the Department of Labor.

Now, and I direct this to any of the three persons who are at the table, if there is a guest worker program put into this law, do I understand that if all of the other provisions that you mention and ask for here are placed in this measure, do I take it that you would still oppose the passage of this legislation, Mr. Kohr?

Mr. KOHR. Well, as a matter for the record, this is a matter to which the committee has not taken a position on the guest worker programs. However, I would like to go back to last year's bill in the House Judiciary Committee, that once it came to the floor, we were supportive. It was part of a package and it did include provisions for a guest worker program. But that is something that we are going to require some further investigation ourselves.

Mr. DE HAAN. I would just make two comments. I think the National Council does oppose a temporary worker program in the legislation, but I want to point out that there is a recognition in many quarters of needs from time to time. There is a long history to the question of H-2 visas and so forth.

I think that from our point of view if there are needs there in the future at some point we feel that rather than putting changes into the law, the program should function as it does today: within the context of the current law. But we oppose a temporary worker program in this legislation.

Mr. HALL. What about these people who try to get folks to work for them and can't? What are they supposed to do, go out of business?

Mr. DE HAAN. I haven't seen too many go out of business.

Mr. HALL. Have you been down on the border of Texas and Mexico and some of the employment agencies of Washington, D.C.?

Mr. DE HAAN. I am not sure I can comment specifically on that. In recognition of the fact that there are needs there, you know there have been programs in the past for specific kinds of jobs requiring various kinds of technical skills in the growing area, and so forth, and these have been accommodated within the context of the administrative discretion. All we are saying is that if there are needs that can be justified and can be demonstrated, then they



should be handled within the context of the present law, perhaps under different rules but nevertheless within the context of the current law.

Mr. HALL. How could you have that handled under the context of the present legislation if you don't have a guest worker in the present legislation?

Mr. DE HAAN. I am thinking of the kind of thing that has happened over the years, where certain groups of people are permitted into the country. I am not saying whether it was right or wrong. They have come in because there was supposedly a demonstrated need for their being here, but it was done within the context of the present law, certified by the Secretary of Labor—this type of thing.

Mr. HALL. I am speaking of a guest worker program that works with the Secretary of Labor to determine the legitimacy of a need. I think you must have that in any program that you have as far as the guest worker program is concerned. Are you saying that you would be opposed to a guest worker program that would be strictly controlled by the Department of Labor as to the legitimacy of the needs of certain people trying to get people to work for them?

Mr. DE HAAN. I think there is a recognition in many quarters that there may in fact be needs down the line, or perhaps even today, but we do not feel that this should be part of the pending legislation.

Mr. HALL. If you have more sanctions, it makes it a violation of the law to employ illegal aliens, and you have a situation that is legitimate where you cannot get people to work. What is the answer for those people who cannot get people to work in particular jobs?

Mr. DE HAAN. I don't think I have an answer to that.

Mr. HALL. Don't you think we are going to have to have one?

Mr. DE HAAN. Yes, but it seems to me that in the context of the total package in the bill involving a great deal of amnesty, let's say, a great deal of employer sanctions, and that there may in fact be groups of people who move across the border, who are undocumented from time to time: maybe the question should be examined more fully in that context of these factors.

Mr. HALL. Are you saying that as it pertains to those people who move across illegally that employers should be allowed to hire those people in those particular instances?

Mr. DE HAAN. No. I am saying handle it in the context of the law. Part of the concern today is a function of today's economy, I think that quite apart from that we have to look at this further down the line.

Mr. MAZZOLI. The gentleman's time has expired.

In the absence of minority members, does Counsel have any questions?

Mr. LEVINSON. No, Mr. Chairman.

Mr. MAZZOLI. Let me yield myself a couple of minutes and I will go back to the gentleman from Texas and he can wrap it up.

Do you think there is anything inherently discriminatory in a program for employer sanctions which says that everyone when they apply for a job would have to verify who they are and that they are qualified to work?

Is there anything inherently discriminatory in that?

Ms. SIMMONS. As was said earlier, I have no problem with verification so long as it is not a green card type of verification. The last time I testified before the subcommittee I made a statement that we would have no problem with utilizing the social security card which everyone has to have anyway.

We would have problems with some kind of "secure system" devised by the administration and may be used to discriminate.

Mr. MAZZOLI. Mr. de Haan, is there anything inherently discriminatory in asking every person that comes forward for a job who they are and make them prove that they are qualified to work?

Mr. DE HAAN. This particular issue has caused a great deal of concern among the denominations associated with the National Council of Churches. I don't think I am in a position to make a judgment on that. I think there are various views.

Mr. MAZZOLI. Mr. Kohr?

Mr. KOHR. As I stated earlier, the committee is evenly divided on the issue.

Mr. MAZZOLI. Let me ask you, is there something discriminatory about giving the employer the option of asking people whether or not they are citizens and whether they can work?

Mr. Kohr?

Mr. KOHR. Well, in theory, possibly not. What we are concerned about is the actual practice and how you do away with some of the abuses, which you are well aware of, Mr. Chairman, and I know you are thinking of ways to try to address them. We are concerned about the practice in theory. I would probably agree with your sentiment.

Mr. MAZZOLI. Mr. de Haan, do you have views on whether the employer should have an option in asking?

Mr. DE HAAN. I think I would have to go along with Mr. Kohr. I think it is a question of practice.

Ms. SIMMONS. I prefer it being a general rule rather than an option. Options tend to get out of hand.

Mr. MAZZOLI. That is what the subcommittee and the full committee did last year. We covered everybody, because we believed discrimination would be more likely if the employer could pick whom to question.

Where an employer has that option there is a possibility it could be misused. In addition, we have that secondary level of penalties for failure to keep the paperwork. But if you are going to ask everybody, if that is the route the committee goes, then what do we ask everybody for?

And we said, well, for a period of time we will ask them for what they normally would have on their person or could easily obtain, but only when they are being hired, not when they are going down the street. Three or four years down the road, if a more secure system is needed if the current system isn't working, then we could put something else in, and many people, including Father Hensler, the former Chairman of the Civil Rights Commission, said a social security type card, made tamper-resistant, though you could never make anything tamper-proof, may be the way to go. He didn't think there was any civil liberty inhibition in that.

Let me just ask you all to give your view on that.



Mr. KOHR. Once again, I don't think it would be fair for the organization to comment.

Mr. MAZZOLI. Mr. de Haan, the same way?

Mr. DE HAAN. It would be the same.

Ms. SIMMONS. We have no problem with a social security type system.

Mr. MAZZOLI. Thank you very much. I appreciate that.

The gentleman from Texas is recognized.

Mr. HALL. No questions, Mr. Chairman.

Mr. MAZZOLI. Thank you very much for your help and attention. You were very good and very informative and you stand adjourned.

We will call our third and last panel for the day. While we are getting arranged we are going to take a 5-minute recess.

I call Mr. John Huerta; Mr. Arnold Torres; Norman Lau Kee; and Benjamin Gim.

We will take a 5-minute recess.

[A short recess was taken.]

Mr. MAZZOLI. The subcommittee will come back to order.

We welcome as our panel Mr. John Huerta, the director of immigration projects, Mexican-American Legal Defense and Educational Fund, Mr. Arnold Torres, the national executive director, League of United Latin American Citizens, Mr. Norman Lau Kee, chairman, Task Force on Immigration and Refugee Policy, United States-Asia Institute, and Mr. Benjamin Gim, Chairman, Committee on Immigration and Refugees, Organization of Chinese Americans, Inc.

Gentlemen, you are welcome, and again, Mr. Huerta, maybe you can begin and then Mr. Torres, then Mr. Kee and Mr. Gim.

We will try and limit your statements to 5 minutes and then we will have questions.

**TESTIMONY OF JOHN HUERTA, DIRECTOR, IMMIGRATION PROJECTS, MEXICAN-AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND; ARNOLD TORRES, NATIONAL EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS; NORMAN LAU KEE, CHAIRMAN, TASK FORCE ON IMMIGRATION AND REFUGEE POLICY, UNITED STATES-ASIA INSTITUTE; BENJAMIN GIM, CHAIRMAN, COMMITTEE ON IMMIGRATION AND REFUGEES, ORGANIZATION OF CHINESE AMERICANS, INC.**

Mr. HUERTA. I am John Huerta, Director of the Mexican-American Legal Defense and Educational Funds immigrant's rights project.

I would like to submit a complete copy of my comments for the record.

Mr. MAZZOLI. Without objection, yours and all the other gentlemen's statements will be made a part of the record.

Mr. HUERTA. Thank you, Mr. Chairman.

MALDEF opposes H.R. 1510. Our reasons for doing so are contained in the document I have submitted in more detail.

Although we oppose the bill, I would like to at this time convey our thoughts to you.

I think you and members of this committee are responsible for elevating the immigration debate in this country to a very high

level in which not only members of your staffs but you are well informed on the issues and, additionally, the racist rhetoric that is normally associated with immigration issues has been completely taken out of the debate and that helps groups participate in this process and feel proud of the American political process in spite of our reservations as to the end result.

Mr. MAZZOLI. We thank you for that statement. It is hard to from time to time, but I think we have very successfully managed to resist that.

Mr. HUERTA. In light of our reservations about the bill, I come today in a spirit of cooperation in proposing some suggestions concerning the amnesty bill.

Congressman Smith earlier today indicated that most estimates are that about 20 percent of those eligible will come forward and apply for amnesty, and the gentleman from FAIR, Dr. Graham, indicated that there are defects in the amnesty programs historically and that most countries' concerns with amnesty come back to retry amnesty to pick up the people that were omitted from it.

In light of my experience and other attorneys in MALDEF, I am trying to indicate some problems that I see with the bill to try to plug it into the reality of the undocumented alien. I will not go into a justification for amnesty, I will take as a given that it is a good thing and go to the more central aspect of my testimony.

The main problem is how do you get the undocumented person to come forward. One would expect since you are handing out a government benefit, something that is greatly desired, that it would be a fairly easy process to accomplish. The undocumented, however, are experts at surviving in the underground system that exists in the United States.

They have entered surreptitiously. Many have false identifications, even false immigration papers. They live in a cash economy, they are paid by their employers in cash, and they make most of their purchases in cash. They do not leave a paper trail; they are extremely good at hiding within that system and they have an informal network that assist them in that regard.

The No. 1 step that you have taken is outreach. I think your proposal is very good in trying to work with the volunteer agencies and the community based agencies. There is however one serious concern that I have. The House Judiciary Committee report on H.R. 6514, last year's bill, provides that if volunteer agencies find they have costs in processing applications they should seek public donations, ask the applicants for voluntary contributions to defray costs or drop out of the program.

I can understand the Government's concern about saving money. I don't think this is a realistic approach to the problem. Community based organizations and volunteer agencies right now are overwhelmed with client caseloads; they are strapped for funds. Many would like to participate but unless there is some type of users fee that will inure to reimburse them for their costs, you will not have a program.

I think you can have a program where they initially come in and are charged a modest amount to cover the expense of the agency and, if further processed by INS, there is an additional fee if one

qualifies for the program, and I don't think people will object to that.

The second and probably the most important aspect of the legalization program is to separate legalization and enforcement. Under the implementation plan that INS developed, those people that failed when they came in and applied for amnesty would be given a notice of voluntary deportation. The problem with that is that the agencies will not put themselves in the position where they will be calling the undocumented aliens in, and, then if they—the undocumented—don't qualify, later on in the process, they will be put in the deportation process.

David North in his study on amnesty very clearly shows that the successful countries that have had amnesty programs have had a separation there. For example, what Mr. North refers to in the Holland experience, they turned back the papers to the person if they don't qualify when they came in and looked for them through normal channels.

The continuous residency requirement is a real problem for Mexican aliens. There are two classes of Mexican aliens that are undocumented aliens in this country.

Mr. Hall referred to the seasonal workers that may come and work 8 or 9 months a year in the Southwest. Many of these people are highly skilled and fairly well paid; they work with specific employers on a regular, stable basis.

The employers know what time they are coming; there is a chain of communication and many people in the Southwest where the perishable crop is a good example, are dependent on these workers to come in and harvest their crops. Many won't meet the time limitations if the continuous residency requirement is flexible enough to count people who have had stable work, albeit seasonal work, over that period of time.

I ask that you have something addressing that. Many undocumented have taken voluntary departures since they know that the border is fairly porous and they can return fairly easily enough if they are apprehended. They do not try to enforce rights that they currently have under the law in deportation proceedings. They take their voluntary departure and are back in a day or two or several weeks at most.

You have to give thought on what effect a voluntary departure will have on the continuous residency. I have run out of time.

[The complete statement follows:]



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**MALDEF**

STATEMENT BY

JOHN E. HUERTA, ASSOCIATE COUNSEL  
MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND

ON

THE IMMIGRATION REFORM AND CONTROL ACT OF 1983  
H.R. 1510

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES SUBCOMMITTEE  
ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

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INTRODUCTION

Mr. Chairman, my name is John Huerta, and I am the Director of the Immigrant's Civil Rights Project for the Mexican American Legal Defense and Educational Fund. MALDEF is a national civil rights organization dedicated to preserving the civil and constitutional rights of persons of Mexican and Hispanic descent. We currently have offices in San Francisco, Los Angeles, Denver, San Antonio, Chicago and here in Washington, D.C.

In recent years, issues concerning U.S. immigration policy and immigrants rights have become increasingly important to MALDEF, because of their significant impact on our Hispanic population. We have had the opportunity on several occasions to testify before your committee and to submit extensive written testimony delineating our position on various legislative proposals.<sup>1</sup> I welcome the invitation to continue that dialogue today.

Our position on employer sanctions is well known. We are opposed to any legislation that contains an employer sanction provision. Our principal objections to the proposed employer sanction provision are based on our belief that they are unworkable, ineffective, expensive and discriminatory. We have previously outlined these concerns and I will address them at a later point in my presentation.

Today, I will commence my discussion with a detailed outline of our views on legalizaton. I have selected the legalization topic for discussion because it represents the most important aspect of any immigration reform package for many Hispanics in this country. For numerous undocumented Hispanics, their families and friends, it holds forth the promise of a new day when one can obtain a measure of dignity, assume one's own identity, fully participate in most in most phases of American society and plan for the future for oneself and one's family.

Almost all experts who have studied the issue of immigration reform have come to the realization that a generous legalization program is central to any comprehensive approach to the immigration problem. The Select Commission on Immigration and Refugee Policy unanimously recommended a sweeping legalization program. This subcommittee and other members of the Judiciary Committee in both the House and the Senate have steadfastly supported the legalization concept while it came under increasing attack by those with less understanding and less empathy for the undocumented immigrant.

You have defended legalization because you realize that it is the only program that will effectively eliminate the underclass that exists on the fringe of our society. Only through legalization will all workers be assured that their rights will be enforced. Additionally, it will mean more federal revenues, because some employers who currently withhold social security and federal income tax from the undocumented worker fail to report and send this revenue to the federal government. Once the employee becomes documented, employers will be unable to continue this exploitation.

Another benefit of legalization, is that it will provide American employers a more stable work place. No longer will production efficiency depend upon when the I.N.S. has scheduled a raid this week or month.

Finally, legalization will cement the foundation of United States immigration policy - family reunification. Many families have some members who are U.S. citizens and others who are undocumented. No longer will they have to live in fear of being uprooted and separated. MALDEF applauds your firm support for legalization.

Legalization, in many ways, is one of the most politically sensitive issues to address in the already difficult and extremely complex area of immigration reform. It is politically volatile because policy makers, and even immigration specialists, do not fully understand, or even pretend to know, a great deal about the object of their legalization proposal: the undocumented immigrant. The absolute number of undocumented persons in the United States is unknown and unknowable. The number who may qualify for a given proposal is unknown. The number who are eligible and who apply for legalization can be known only after the fact. How many newly documented immigrants subsequently will use social services, and to what extent, may never be ascertained. Yet, one may approximate or even speculate as to these numbers. Because the numbers vary to such a great extent, it is difficult for the policy maker to be confident that she or he is making the right decision - especially when a vocal constituency has a different view of the world. <sup>2/</sup>

Even if one were certain about the numbers, legalization is also a difficult concept, because one appears to be rewarding the undocumented for their unlawful conduct in illegally entering the United States in the first place. <sup>3/</sup> While this concern is a serious one, the question of illegal migration is much more complex. It has been said that "There is a tacit understanding - one which is not known to the public - which allows illegal aliens to cross the border in search of work." <sup>4/</sup> I am not certain that I would go quite that far, but I do believe there has been a lack of concern about undocumented migration (manifested by scarce funding for INS and resulting laxity of enforcement) throughout most of the 1960's and 1970's because most

people in the U.S. benefited from undocumented migration. During the last 20 years when our economy was growing at a steady rate and unemployment was relatively low, there was a need for low-cost unskilled workers to fill the undesirable jobs in our society. The United States workers, managers, owners, consumers and most importantly, the economy, benefited from the hard-laboring undocumented who made our society more productive. This view of the world sees the undocumented not so much as a lawbreaker as a de facto participant in a long-term relationship that has benefited the United States economy and society. But even this view of the world has its negative aspects. Almost all undocumented are vulnerable to exploitation because of their unlawful status. Some employers (I would venture to guess, a distinct minority) subject the undocumented worker to hazardous and unlawful working conditions. A more common form of exploitation occurs in one's own neighborhood where one's unlawful immigration status permits the unscrupulous in our society -- whether landlord, merchant, con-man, thief or thug -- to prey upon the undocumented on a daily basis. The undocumented are so fearful of detection by the authorities that they do not report these crimes to the local police. Legalization is the only humane solution to the exploitation and victimization of the undocumented.

Legalization is the only practical solution to the large number of undocumented who are present in the U.S. Mass deportation of the millions of undocumented is totally unacceptable to the American people. The President, the Attorney General, the Select Commission on Immigration and Refugee Policy and bipartisan leaders of both Houses of Congress have rejected mass deportations as an unacceptable alternative. Mass deportations would be extremely disruptive to the American



economy, likely to violate the civil rights of U.S. citizens in some cases, and result in an inefficient use of resources, since many long-term undocumented residents would enforce their right to stay here in deportation proceedings.

Once one realizes that the status quo option is becoming less desirable and that the deportation option is unacceptable, one must embrace the legalization option. Within the legalization option, there is a range of issues that determine whether the legalization program is a comprehensive, humane approach or, at the other end of the spectrum, a restrictive, niggardly program that benefits few. If one's goal is to mainstream the undocumented immigrant, to register, document and identify as many as possible so that our immigration reform may start anew, one would favor a broad, all-inclusive legalization program. If one's goal is mainly symbolic and token, a nod toward reform and a step upward from the status quo, one would favor the restrictive approach. Unhappily, there are those who would like to guide HR 1510 toward the symbolic goal rather than follow the politically difficult road of bringing the undocumented under the wings of America's democratic institutions.

### Legalization Policy Issues

To be successful, a legalization program must be simple; the criteria as to who qualifies must be clear and the process must be fair. The initial and most difficult aspect of the legalization plan will be to convince the undocumented to come forward and identify themselves. This would appear quite easy upon first impression. The government is offering a benefit and those who qualify would seem to jump at the chance of having their status legalized.

But not all the undocumented are your ordinary government benefits seekers. Many are survivors--survivors outside the formal legal system. They have entered surreptitiously. Many have been apprehended by the INS and returned to the United States several times. Many have used pseudonyms and purchased false identification--and even false immigration papers. Some are paid in cash by their employers; and some pay in cash for all their purchases. Checks and plastic credit are unknown to many of these survivors. They do not leave a paper trail. They will be skeptical as to whether they will qualify for legalization. Because of the INS's handling of the "Silva Letter holders" I would imagine that many of the undocumented will be cynical as well as skeptical about legalization efforts. Numbering in the range of 250,000 Silva class members and their families were, at one point in time, eligible to immigrate under our federal laws. In fact, they all filed applications to legalize their status. Had it not been for an illegal policy implemented by the INS, whereby it shifted the immigrant visa numbers rightfully belonging to those with INS-approved application to another group of persons, many of these Silva people would be lawful residents today. Court litigation challenged the legality

of the INS policy decision, and a preliminary injunction was issued, compelling the Service to recapture and return the visa numbers to members of the Silva class. (See Silva v. Bell, 605 F.2d 978 (C.A. 7th Cir., 1979)). Despite the court order, administrative snafus, consular backlogs, and general mishandling of the applications delayed the processing of these individuals as much as two to four years. When the court order expired in November of 1981, we found approximately 100,000 to 150,000 Silva class members who could not immigrate. Again, it was through no fault of their own. Without consulting the plaintiffs' attorneys or the court, the Service had begun, on its own initiative, to issue letters to the class members and in effect sent more Silva letters than there were available visa numbers. The Federal district court had mandated the recapture of 145,000 visa numbers. The Service mailed out approximately 300,000 Silva letters. Out of status once more, they found themselves with an uncertain future. Confusion and panic immediately set in.

In January of 1982, MALDEF, along with a score of other organizations, submitted an administrative petition to Attorney General William French Smith, requesting that he exercise his discretionary authority under the Immigration and Nationality Act to grant extended voluntary departure status to remaining members of the Silva class. No definitive response came out of that petition. Yet in the heat of debate over the Simpson-Mazzoli legislation, the Administration decided to grant temporary legal status to the Silva people in August 20, 1982, effective on that date and terminating on January 31, 1983. As we all know, the Simpson-Mazzoli bill did not pass. And January 31st has come and gone. Once more, the Silva people are

thrown back into turmoil. Again, they face a future of uncertainty. Again, they have reverted to an undocumented status.

I detail the experiences of these Silva people, because they illustrate the problems and pitfalls any legalization program will encounter. Many of these individuals came forward and presented themselves to the Immigration Service. They submitted their applications, presented the requested evidence and patiently waited. They satisfied the legal requirements and INS approved their petitions. By a quirk of fate, however, they did not receive that much desired green card. Instead, the Service had chosen to give the immigrant visas to another group of people--a policy that was both reprehensible and unsupported by any legal authority or policy decision. Worse yet, the immigration laws had changed in 1977. Whereas undocumented persons could legalize their status through U.S. citizen children, the 1976 amendments altered the provisions, so that after January 1, 1977, only adult citizen children could petition their parents. Moreover, the amendments had imposed an annual quota of 20,000 on each of the Western Hemisphere countries, consequently causing a drastic reduction in the number of Mexican nationals and others who could immigrate to the United States. Public Law No. 94-571, 90 Stat. 2703. But for the preliminary injunction issued in the Silva lawsuit, the delays resulting from the misallocation of visa numbers would have caused a forfeiture of thousands of Silva visas for class members and their families.



Of all persons in the undocumented population, these Silva families should be the first to qualify for legalization. Without exception, these individuals have lived in the United States for a minimum of six years and, in some cases, for as long as ten or more years. They have purchased homes, secured gainful employment, and raised their children in our society. With incredible fortitude and patience, they waited for the Immigration Service to complete the processing of their applications--only to find that the promise of a permanent home was cruelly withheld. If the treatment accorded to these Silva letter holders are indicative of what may happen to other undocumented persons who come forward, then the legalization proposal is doomed to fail.

#### Outreach

H.R. 1510 and S.529 use the right approach in relying upon the voluntary agencies and community groups to assist in the legalization process. Very few undocumented will risk coming forward directly to the I.N.S., which is often perceived as the enemy. I.N.S. has an extremely negative image in the Hispanic community even among Hispanic citizens. It is perceived as an agency that singles out Hispanics for special treatment. The I.N.S. will need to rely upon community agencies for the public contact work.

I am skeptical, however, that volunteer and community based agencies will carry out the legalization program without incurring any costs and without seeking reimbursement for such costs from I.N.S.

The Judiciary Committee Report on H.R. 6514 provides:

If voluntary agencies find they have costs in processing applications, they should seek public donations, ask the applicants for voluntary contributions to defray costs or drop out of the program.

While the government's interest in saving money is understandable, this is a curious way of going about it. The government does not run any other service program based upon the cost-free cooperation of non-profit social service organizations. As it is now, voluntary agencies are overwhelmed. They just won't be able to cope without additional resources. If organizations do not participate because they cannot afford to, the legalization program will be a still birth. A more sensible approach for the government is to charge a modest, reasonable user's fee for the initial petition review within the voluntary agency. Once the petition is prima facie qualified for legalization, another modest fee could be charged by INS for further processing the petition.

#### Separation of Legalization from Enforcement

The single most important ingredient for a successful legalization program is the separation of the legalization service aspect from the enforcement arm of the I.N.S. If an undocumented immigrant risks deportation as a result of guessing incorrectly as to whether he qualifies for legalization, he will not take the risk, especially if the criteria for adjustment of status are not crystal clear to the individual considering the option. More importantly, the voluntary and community agencies will NOT serve as the enforcement arm of the I.N.S. The entire amnesty program will fail if the two are linked. The legislative history of H.R. 6514 and S.2222 would seem to indicate

that it was not the intent of Congress to link the two--but the I.N.S. implementation plan calls for such a linkage. In fact, I.N.S. estimates that 38% of the undocumented population will qualify for legalization <sup>5/</sup> and that the remainder will be subject to deportation. <sup>6/</sup> Other countries have addressed this issue: some successfully, like Holland which guaranteed no follow up (i.e., the legalization application was destroyed if the applicant did not qualify); some unsuccessfully, like Great Britain, which linked enforcement to amnesty so that relatively few undocumented immigrants participated. <sup>7/</sup>

This is not to say that I.N.S. should surrender the role of advising public contact personnel on individual cases. It is also appropriate for I.N.S. to investigate and prosecute fraud. However, if a legitimate claim for legalization is made and fails, (e.g., for lack of adequate proof, failure to show continuous residency, etc.): the I.N.S. should return the legalization petition, without noting the name, residence and place of employment of the applicant.

#### Continuous Residence

The continuous residence requirement, as with other legalization requirements, needs to be clarified. There are several nitty-gritty issues that makes this the most difficult to handle. There are at least three main groups of undocumented within the U.S.; slightly less than half of these persons are of Mexican origin. <sup>8/</sup> Within the Mexican group, some are permanent (year-round) immigrants while others are seasonal immigrants. The year-round Mexican undocumented are similar to the majority of undocumented except they are more likely to return to their homeland for short visits of up to 30 days--to attend weddings, funerals, family celebrations, holidays, etc. A

large number of the Mexican undocumented are seasonal immigrants who reside most of the time in the U.S.; they usually work 9-10 months of the year in agriculture and return to their villages in Mexico for the remaining 2 to 3 months. Often their jobs, are highly stable, although seasonal, and their relationship with a given employer may date back 5 to 10 years. United States agriculture, especially in the Southwest, is highly dependent upon these hard working employees, some of whom are well-paid and highly-skilled. In the case of many seasonal workers, their equities are great, especially in comparison to more recently arrived undocumented workers who may qualify for the temporary visa category. "Continual residence" should be defined so as to cover these agricultural workers who would otherwise meet the cut-off dates. A grant of lawful permanent residence (or temporary visa where applicable) will give a measure of security both to the worker and to the agricultural industry and the American consumer that literally depends upon the fruit of the undocumented worker's labor.

Another issue related to the "Continual Residence " requirement is the effect a voluntary departure will have on the cut-off date. Sometimes undocumented workers are apprehended. Once apprehended they sign a voluntary departure, and are sent to Mexico. Often they return to the U.S. after a week or two. In many instances, these undocumented workers have a family, job, and home in the U.S. The voluntary departure in itself should not cause the clock to stop on an eligible undocumented worker whose absence was not sufficient to violate the continual presence requirement. Otherwise, the voluntary



departure could act as an extreme hardship on a long-term undocumented immigrant resident in the U.S. who recently took a voluntary departure and had substantial equities - but did not request a stay of deportation because of ignorance of his rights or because he knew that he could readily return.

#### Public Charge

Under current immigration law an alien may be denied a visa or excluded from the U.S. if, in the opinion of I.N.S., the alien may become a public charge. 8 U.S.C. § 1182 (2) (15).

The I.N.S. is granted broad discretion in applying this provision. In the legalization context, this requirement (depending upon the standard applied) could have a negative effect upon the undocumented coming forward to apply for the program.

In Los Angeles County, for example, 11% of the Hispanic origin families counted by the Census Bureau earn under \$5,000 per year; 9% earn between \$5,000 and \$7,499, and an additional 11% earn between \$7,500 and \$9,999, i.e., 31% of all Hispanic origin families earned less than \$10,000. Additionally, Hispanic families tend to be larger than other families, which means that average per capita income is even lower. The undocumented are likely to have an even lower economic profile.

If the public charge provisions are strictly applied, many undocumented will not qualify for legalization even though they have been living on their meager incomes and supporting their families for many years. I would urge Congress to delete the public charge requirement or modify it drastically to reflect the lower standard of living of similarly situated citizens and immigrants.

### Proof of Eligibility

Another difficult area for implementing the legalization program is that many undocumented do not have the documents that most citizens and lawful immigrants would have to prove their residency. Many live and function in an underground economy. They receive cash wages and make their purchases in cash. Some of those who deal with the undocumented, such as landlords, insist on cash payments and do not give receipts.

The problem is further complicated by the fact that many documented aliens use pseudonyms and false identification. A utility bill may be in one name, a fraudulent alien receipt registration card in another and the alien's birth certificate in an entirely different name. In order to discourage fraud and encourage the undocumented immigrant to come forward, MALDEF urges the liberal use of sworn affidavits by those who have known the undocumented person while he has resided in the U.S. Affidavits from clerymen, employers, landlords, neighbors, and others should be used to verify who the legalization applicant is and how long he or she has resided in the U.S.

### Two-Tier Legalization

MALDEF opposes any legalization provison which contains a two tier-system. Implementation of legalization will be an extraordinary difficult undertaking. Confusion, costs, administrative problems will be minimized if only one status is accorded. Finally, we are concerned that the government not legitimize the "second class" image which undocumented aliens would bear if accorded temporary residence status.

MALDEF supports a simple and generous legalization program that would encourage all undocumented immigrants to come forward, be identified and be mainstreamed into American society without retribution or discrimination.

#### Cut Off Dates

MALDEF supports a recent cut-off date because we believe that it is in the public interest to register and document as many immigrants as possible. The employer sanction provisions of H.R. 1510 has an exemption for employers who hired their undocumented aliens prior to the effective date of the law.<sup>9/</sup> If the alien entered the country after the cut-off date (January 1, 1980) and prior to the effective date of the bill (probably October 1, 1983) the undocumented alien would be in limbo. He will be vulnerable to exploitation by the employer who could threaten to turn him over to the I.N.S. if he complains about wages or working conditions. While the numbers are not known, there could be hundreds of thousands of undocumented workers in this category. It will then be difficult, if not impossible, to have a real immigration reform should Congress fail to consider the plight of these workers.

#### Cost of Legalization

It is undeniable that legalization will have certain costs associated with it. And those costs will depend upon the restrictions that are attached to the newly documented immigrants. The cost estimates of the Congressional Budget Office are the most comprehensive and realistic of all the studies done so far. The CBO clearly states its assumptions and draws its conclusions based upon careful analysis without a political axe to grind.

None of the cost estimates, however, have looked at the other side of the ledger to determine what undocumented aliens have paid into the federal coffers. One study, <sup>10/</sup> touted by immigration restrictionists, shows that undocumented immigrants consumed \$213.8 million in Los Angeles County services in FY 1981. What the restrictionists neglect to say is that the same study indicates that undocumented aliens in Los Angeles County generated \$2,535 billion (not million, but billion) dollars in tax revenue to federal, state and local tax sources.<sup>11/</sup> Most studies have concluded that undocumented workers are also undocumented taxpayers who have paid more in taxes than they have received in services.<sup>12/</sup> This is not to say that once legalized and once entitled to services that they will not use them at a higher rate. There undoubtedly will be some increase in services - but it is sheer speculation to guess what the increase will be. (Immigrants generally work harder and are more productive than citizens of even the same ethnic group.)

The point of the studies is that undocumented immigrants pay more than their share of the bill. By their labor and their taxes, they have earned some equity that ought to be taken into consideration in deciding how sweeping and generous a legalization program should be.

And, as I reiterated earlier in my testimony there are some unscrupulous employers who withhold social security and income taxes from their undocumented employees knowing their illegal conduct will go undetected (typically these employers pay their employees in cash so that the employer leaves no paper trail of this activity). With legalization, however, these employers will not be able to take advantage of the undocumented and the government and federal revenues will increase.



Due Process

Just as the legalization requirements should be simple, clear and just so should the process be fair. The government should publish its intended regulations for public comment so that those who have experience working with the undocumented will have an opportunity to comment. As in all other immigration matters, the petitioner for legalization should have the right to be represented by counsel at his own expense. Additionally, in those rare cases where a petitioner believes he has been treated in an arbitrary or discriminatory manner, he should have recourse to administrative and judicial review as provided in the Administrative Procedure Act. These notions of due process are fundamental to our legal system and, in the end, strengthen our respect for our system of government.

Conclusion

In my testimony before you today, I have not tried to paint the undocumented immigrant as either a saint or a sinner. While there are always exceptions, generally the undocumented worker who comes to this country is no different from our forefathers who came seeking a better life, hoping to invest something of themselves in America so that their children who benefit from their toil. You as Congressmen in shaping the legalization program, will be making decisions which will determine whether the legalization program will be purely symbolic or a realistic opportunity for de facto immigrants to receive the protection of the law of our legal system so that they may in turn, contribute openly to public good.

## FOOTNOTES

<sup>1</sup>/ Testimony of Vilma S. Martinez, President and General Counsel, MALDEF, before the Joint Senate and House Subcommittee Hearing on Immigration and Refugee Policy, May 6, 1981. See Appendix A for a summary of MALDEF's immigration proposals.

MALDEF's view on, and in opposition to, all employer sanctions proposals are well known to members of this committee and I will not belabor that issue before you today.

Attached to Appendix B is a summary of MALDEF's critique of the employer sanctions proposals contained in H.R. 6514 and S.2222; for further exposition on this issue see:

Testimony of John Huerta, Associate Counsel, MALDEF, before the Senate Subcommittee on Immigration and Refugee Policy, Sept. 30, 1981 (critique of President Reagan's employer sanction proposal);

Testimony of John Huerta, Associate Counsel, MALDEF, before the Senate Subcommittee on Immigration and Refugee Policy, Oct. 2, 1981 (critique of proposals for national worker identity card).

Testimony of Morris J. Baller, Vice President for Legal Programs, before the House Subcommittee on Immigration, Refugee and International Law, October 21, 1981 on President Reagan's employer sanctions proposal.

Testimony of Antonia Hernandez, Associate Counsel, before the Joint Senate and House Subcommittee Hearings on the Immigration Reform and Control Act of 1982, April 1, 1982 (critique of H.R. 6514).

Testimony of Joaquin G. Avila, President & General Counsel, MALDEF, before the Senate Subcommittee on Immigration & Refugee Policy, February 25, 1983, (critique of S. 529).

2/ And sometimes local constituents may have an inaccurate view of the world - especially if their sources of information are articles like the one that appeared March 7, 1983 in U.S. News & World Report, entitled "Invasion from Mexico," which inaccurately reported that undocumented aliens comprise 20% of patients in Los Angeles County Hospitals. This is highly unlikely since the county reported that \$76.5 million (8%) of the \$937.8 million budget was spent on undocumented patients.

The articles also claimed that 25% of students in Brownsville, Texas school are foreign-born -- allegedly because of a U.S. Supreme Court ruling in Doe v. Plyler allowing education for undocumented children. In fact, Brownsville's Superintendent of Schools indicates that, in 1982-83, only 3.3% of enrollees were foreign born and that over half of those are in this country legally. Articles of this nature scapegoat the undocumented immigrant and generate discrimination and hatred against both Hispanic immigrants and citizens alike.

3/ A corollary of this argument is that legalization is unfair to the hundreds of would-be immigrants that patiently wait in line to receive their visas to enter the country lawfully. MALDEF supports the proposal of the Select Commission on Immigration and Refugee Policy which calls for an additional 100,000 visas for the first five years to allow backlogs to be cleared. SCIRP, U.S. Immigration Policy

and the National Interest, page 106 (March 1, 1981). MALDEF believes that this represents the most equitable manner to treat all those involved in the immigration process.

4/ Memorandum from J. Ghougassian to Mr. Anderson and E. Gray, re: Undocumented Mexican Aliens/Employer Sanctions/National I.D. Labor Card, March 4, 1981, page 6.

5/ Draft of Implementation Plan for the "Immigration Reform and Control Act of 1983, P.L. \_\_\_\_\_," November 1, 1982, pp. 1, 12. The Immigration Service estimated that out of a population of 6 million undocumented, only 2.3 million would meet the date of entrance and continuous residence requirements for legalization. Of the eligible 2.3 million, about 730,000 would apply for permanent resident status and 1.6 million would seek temporary resident status.

6/ Ibid at page 25. The Draft Implementation Plan provides: In cases where an application is denied at the Processing Facility because of ineligibility for the program (for example, insufficient residence), a supervisory examiner will review the decision prior to a final determination and notification of (sic) the alien. With the notification of denial, an applicant will be given a notice to depart voluntarily from the United States and information on the appropriate procedures to appeal a denial. A copy of the voluntary departure notice will also be sent to the INS office with jurisdiction over the area where the denied applicant lives after the time limit for the appeal has elapsed or where the appeal is denied. (Our emphasis.)

7/ Amnesty: Conferring Legal Status on Illegal Immigrants, David North, New Trans Century Foundation, Washington, D.C., December 1980, p. B 16-19.



It is interesting to note that North's data on the Canadian experience indicates that 25% of amnesty beneficiaries in Canada were U.S. citizens. Ibid. at A-36.

8/ For a good overview of the literature on this issue, see W. Cornelius, L. Chavez, and J. Castro, Mexican Immigrants and Southern California: A Summary of Current Knowledge 16-21 (June 1982).

9/ Sec. 274A (a)(1).

10/ Harry L. Hufford, Chief Administrative Officer, Los Angeles County, COST OF SERVICES TO UNDOCUMENTED ALIENS, April 14, 1982.

The methodology of this study has been severely criticized by W. Cornelius, L. Chavez and J. Castro, Mexican Immigrants and Southern California: A Summary of Current Knowledge 55-58 (June 1982).

11/ This study only measures county costs. It does not measure Federal and State costs. It also does not attempt to measure that portion of Federal and State revenues paid to the County (e.g., through revenue sharing or block grant programs) which may offset country expenditures on undocumented immigrants. This would be important for the County to do since, by its study, it is attempting to show there is an inequitable burden born by local government because of services to the undocumented population.

12/ Most of the major studies for Southern California are reviewed and critiqued in Cornelius, et al, supra note \_\_\_\_.

An Affirmative Immigration Policy

The formulation of the immigration policy of the United States is an intricate task requiring the delicate balancing of a wide range of foreign and domestic policies. United States trade policy, national security and energy policies, relations with developing countries, the domestic economy, and the civil rights of American citizens are all inextricably linked to United States immigration policy. Likewise, the economic and demographic phenomena which must be considered in the formulation of the United States immigration policy are varied and complex. For example, the significant presence of undocumented workers of Mexican origin is affected by the following factors: (1) on the United States side, our need for labor, the insufficient supply of workers to support our "graying" population, stagnant productivity, the causes of persistent unemployment, our need for ample and secure energy resources, and concern for the political stability and orientation of neighboring countries; (2) on the Mexican side, economic underdevelopment and the need for technology and investment capital, the population explosion, and treatment of Mexican nationals within the United States; (3) on a bilateral level, trade restrictions and markets, energy development policy, and response

to political instability in Central American and the Caribbean basin. One cannot make immigration policy in a vacuum, but must consider its impact on all these other issues. One must also remember that while United States policy is based on American interests, the national interest also requires sympathetic attention to the problems of Mexico, which is not only a neighbor of growing influence in the hemisphere and on the international scene, but also holds the key to energy and human resources which may become indispensable to United States own national development. The policy of the United States toward Mexico is, in the long run, as critical to our national security as is our policy toward the Middle East.

MALDEF's recommendations with regard to many matters commonly but imprecisely thought to be questions of immigration policy require that those matters be seen for what they are, not solely as immigration issues. To the concern about more jobs and reducing unemployment, one must say: the real question is, why has our economy failed to produce enough jobs to engage the productive capacity of our people, a failure which is caused by far more basic forces than the recent flow of undocumented workers to jobs shunned by the domestic workforce. To the concern over fund-

ing of public services, one must say: assure adequate funding by incorporating this dynamic, productive segment of industry and the workforce into our permanent tax base. One must invest wisely in our future by providing educational and public health services for all members of our society, and one merely defers heavy financial and social liabilities when one denies such services while blaming immigrants for their costs.

#### I. Specific Immigration Policy Recommendations

The research and experience necessary to guide the formulation of the immigration component of such important policy matters has not been completed or analyzed. Critical knowledge gaps impair our ability to legislate or set policy with any clear understanding of either our needs or the consequences of policy alternatives. In this situation, hastily enacted policy decisions would be speculative and potentially counter-productive. The necessary research should be carried out in an objective and comprehensive manner, as expeditiously as possible, in order to provide a firm foundation for proper action.

Even now, however, the outlines of a fair and effective immigration policy are visible. Immigration policy should provide opportunities to receive the social and economic benefits accorded



to United States residents, to persons who over a period of time work in our industries, pay taxes and contribute to our economic welfare, or who are immediate relatives of United States citizens and permanent residents. This should be accomplished in four ways:

- (1) By recognizing and expanding the traditional family reunification policy which underlies United States immigration law;
- (2) By eliminating or greatly increasing the per country limitation of 20,000 visas per year for Mexico;
- (3) By adjusting the status of undocumented workers who have equities in our society to permanent resident alien status;
- (4) By assuring the fair and non-discriminatory administration of immigration law by the Immigration and Naturalization Service (INS), with emphasis on service functions.

#### 1. Family Reunification

Family reunification has for several decades been an underlying theme of American immigration policy. Family reunification is favored so that United States citizens and permanent residents need not exile themselves in order to be with members of their families. Under this policy, immediate family members are given preference for immigrant visas by exemption from numerical limitations (in the case of spouses, minor children and parents of adult citizens) or by reservation of a fixed number of visas for other close family members. While this policy is both

humane and prudent in knitting the fabric of a stable, orderly society, the supposed advantage for relatives not exempt from numerical visa limitations is rendered somewhat illusory by those quotas.

In the case of Mexico, whose nationals need and want to immigrate in greatest number, the policy choice is illusory unless it is implemented by changes in the numerical limitations.

## 2. Visa limitations

As recently as 1976, there was no fixed limitation on the number of immigrant visas issued to nationals of Western Hemisphere countries, and Mexican citizens obtained 40,000 to 50,000 such visas each year. The existing per country limitation of 20,000 visas creates a hardship on Mexicans attempting to enter the United States legally. There is currently a five year backlog for spouses and children of permanent resident aliens from Mexico, and long waits for siblings and other close relatives. This is unfair since there are many countries, mostly developed countries whose citizens are not desirous of entering the United States, for which there is no waiting period for visas. Legal backlogs which are perceived as hopelessly long encourage illegal immigration outside the waiting list visa system. A more equitable

approach would be to allocate visas to each country from the total number of visas available in proportion to the number of visa applicants from each country. For example, if there are 100,000 visas available, and forty percent of all applicants were from Mexico, then Mexico would receive 40,000 visas that year. An alternative approach would be to recognize our special relationship with our neighbors by exempting Mexico and Canada from per-country limitations or granting them a separate, enlarged allotment of visas.

### 3. Adjustment of Status

The Mexican American Legal Defense and Educational Fund (MALDEF) advocates that an opportunity to become legal resident aliens and, eventually, citizens be given to most persons who have resided and worked in or otherwise established ties with our society. Such opportunity should be extended to all those who entered the United States prior to some fairly recent date--for example, January 1, 1982--and have remained here in a socially or economically productive capacity. The opportunity should be well publicized and should truly encourage all eligible undocumented persons to come forward. Furthermore, those who fail to qualify for permanent residency should be offered temporary visas with the opportunity

after one year to qualify for permanent residency based on a good work record and payment of taxes.

In our opinion, the Simpson-Mazzoli proposal is so restrictive that many undocumenteds will not participate in it. They are not entitled to have their families with them, nor will they have access to social services, regardless of individual cases of merit. Many will be asked to suffer great hardship to participate in the program.

This step--adjustment of the status of the qualified undocumented population--will not meet all of America's projected labor needs since the undocumented workers are already present in the United States labor market. But it will improve their working conditions, legal status, and eventual political participation. Their equities are great: they have been attracted here by the economic necessities of our country, have contributed their labor, paid their taxes, and have significant community ties. The alternatives--to relegate them to a permanent underclass or to deport them--are unacceptable to MALDEF and the Hispanic community, and would result in our country forfeiting a potentially great human resource.



4. Non-Discriminatory Law Enforcement and Service Functions

It is vitally important to the well-being of the country as a whole, as well as that of the Mexican Americans and other minorities, that we foster respect for the law and non-discriminatory application of the laws. Unfortunately, this country has often broken its promise of equality. Our federal immigration laws have been sporadically enforced--and when they have been enforced, it has been in a discriminatory manner. A large majority of INS resources are directed at Mexican entrants--who make up less than half of the undocumented population. The Mexican American community perceives that this is because there is little concern about undocumented persons from developed countries who enter illegally or overstay their visas. Racism appears to be a strong factor in this disparity of concerns. INS agents who participate in "area control" operations directed at workplaces or residences (i.e., not at identified individuals) arbitrarily stop for questioning persons who look foreign, including many United States citizens and legal residents of Mexican, Hispanic, or Asian origin. State and local police officials, who have no legal authority to enforce federal immigration laws, take extraordinary liberties in violating the

rights of national origin minorities who look foreign. Frequently the police attitude that undocumented persons have no rights translates into unnecessarily rough treatment or even physical assault, and citizens and permanent resident aliens have been injured in such incidents. The effect of all these activities on public opinion is to stigmatize undocumented persons and, by association, Mexican Americans, as less than fully human and not entitled to equal rights or any rights.

The Select Commission's report, the Administration's proposals and the Simpson-Mazzoli legislation are permeated by a belief that draconian police measures can control undocumented aliens. They suggest increased interior and border enforcement and call for more hardware and personnel for the Border Patrol. Such measures can only make the revolving door of Mexican immigration turn more quickly; they cannot stop a phenomenon which is in response to powerful human, economic, and demographic forces.

The United States must reverse this orientation and counteract its harmful effects. The commitment to equal justice will more than make up for the loss of an illusory efficiency in apprehensions through benefits accruing to domestic order and civil

rights. Federal, state, and local law enforcement officers should be instructed and required to observe constitutional and legal limitations on their activities. "Law enforcement" means more than sealing the border or raids on suspected alien centers. It should include more vigorous and effective monitoring and enforcement of labor laws, such as minimum wage, unemployment insurance, and occupational health and safety, that employers often seek to evade by hiring undocumented aliens to work in substandard conditions. Assuring that employers comply with minimum standards legislation will eliminate illegally inspired incentives to hire the undocumented alien.

The service function of the Immigration and Naturalization Service is less adequately staffed and funded each year, reflecting the shift in the government's emphasis from service to enforcement which is often discriminatory. The service aspect of INS should be competently and adequately staffed. The management of INS needs to be brought out of the 19th century and be given automatic data processing capability to permit those nominally in charge to manage the bureaucracy and the work-flow of services cases, applications, and petitions. Efforts should be made to eliminate the huge back-

logs and long waits which now confront applicants for entry, certification, adjustment of status, or naturalization, and which may discourage or deter persons from following legal procedures.

Only when the law is enforced even-handedly, and when INS recognizes its service function, will immigration laws be respected and effective in this country.

## 2. Other Policy Recommendations

Our immigration policy must be coordinated with all other related policies--trade, energy, foreign, and domestic. The goals of all those policies should be to enhance American economic development, social welfare and civil rights, and national security, and to ensure a stable, developed, democratic and non-totalitarian nation on our southern as well as northern border. The United States must realistically address difficult issues as improving opportunities for American minorities with the realization that immigration policy will not provide a "quick fix" for any of these intractable problems. Indeed, sound and successful policies that resolve our real economic problems will alleviate much of the perceived "problem" of undocumented workers which fuels the current immigration debate. Likewise, immigration policy cannot bring about



necessary development of labor-intensive industries in those parts of Mexico which have the most severe job shortages and now export their excess workers. A combination of trade, investment, and technical assistance must complement immigration policies to accomplish this long-term development, which would deal with the underlying sources of the Mexican migrant flow.

It would be beyond the scope of this to suggest in any detail what other policies outside the immigration area should be followed in lieu of the ill-advised employer sanctions and guest worker programs and in addition to the positive immigration proposals set forth above. But these other policy goals may be briefly indicated. They are not new, but they are difficult and they are important. They include provision of improved educational opportunities, growth in jobs and productivity, effective prohibition of employment discrimination, and equal treatment of all persons by the government. They are the basic problems and the basic goals that have existed since before we became concerned about immigration problems and immigration policy goals, and they will remain with us no matter how we shape our immigration policy. By effectively addressing these issues, our country can maintain a sound economic

and social condition. Without meeting our most basic national challenges head-on, we can accomplish little by a narrow focus on immigration policy.

EMPLOYER SANCTIONS PROPOSALS

Some immigration reformers perceive employer sanctions legislation as the key to the undocumented alien problem of the United States. They believe that this legislation will cut off the flow of undocumented aliens to this country. In turn, they believe, that domestic employment will rise and wages and working conditions of the American worker will improve. The Nixon, Ford, Carter and Reagan Administrations, as well as the Select Commission on Immigration and Refugee Policy (SCIRP) supported various employer sanctions proposals.<sup>1</sup>

Bipartisan legislation may soon pass Congress which includes among its "reform" measures a proposal which will subject employers to penalties for knowingly hiring aliens unauthorized to work in the United States.<sup>2</sup> All employers are covered by this legislation, although employers of three or less employees are exempt from the record-keeping requirements. Employers must verify that they examined new workers' identification. For the first three years, the proposal relies upon existing forms of identification: United States passport, social security card, birth certificate, driver's license, etc. The bill provides an

affirmative defense for an employer who shows good faith compliance with the record-keeping requirements by examining the document to see if it "reasonably appears on its face to be genuine."<sup>3</sup>

Within three years the Administration would be required to implement "as necessary" a more secure system of employment eligibility verification which may include a telephone verification system or a work authorization card, but not, according to the House version, a national identification card.<sup>4</sup>

The case against employer sanctions can be stated simply: employer sanctions will not work to reduce significantly the flow of undocumented aliens into this country. Although employer sanctions will not accomplish their stated goal, they will have negative effects on our economy and society. The entire business sector will be saddled with a burdensome regulatory structure; the federal bureaucracy will expand; foreign-looking minorities will suffer increased discrimination; and all citizens will suffer a loss of individual freedom. This is an extremely high price to pay for an ineffectual and experimental regulatory scheme.

A. EMPLOYER SANCTIONS WILL NOT BE ENFORCED

All reliable evidence points to the conclusion that



employer sanctions will not be enforced. Even though there is a federal law with criminal penalties prohibiting farm labor contractors from hiring undocumented workers,<sup>5</sup> there are probably more undocumented aliens employed in agriculture than in any other sector of the economy.<sup>6</sup> Additionally, eleven states, including California, have laws prohibiting the employment of undocumented workers. According to one study of the Comptroller General of the United States, only one \$250 fine has been levied in the combined experience of all states with employer sanctions legislation.<sup>7</sup> Another recent Comptroller General study of the experience of nineteen countries, most of which are European, concludes that employer sanctions legislation is a failure and is not enforced in the countries surveyed.<sup>8</sup>

Why is it that the attempt to regulate the lawful flow of labor has failed so miserably? To answer this query one must look to the reasons underlying the undocumented labor flow and the conditions in the developed countries that receive the fruit of that labor.

The reasons for international migration are well known.<sup>9</sup> They include not only the desire for better employment, but also

the more general search for an improved standard of living.

The absence of economic opportunity in the source countries is often severe enough to spur migration to developed countries even where job opportunities are non-existent. Additionally, for many there are non-economic "push" factors such as a strong desire for family reunification or flight from tyranny and political oppression. The risks attendant to being denied employment because of one's immigration status pale in comparison to the day-to-day risks of survival in some source countries.

The undocumented worker who arrives in the United States is often willing to work for wages and under working conditions that are not acceptable to domestic workers. Some American employers find that undocumented laborers are willing to work hard, are productive, follow managerial direction and work in boring, dirty, or dead-end jobs. Certain sectors of the American economy such as the garment and textile industries have become highly dependent upon undocumented workers because of increasing competition from low-wage workers abroad in similar enterprises.<sup>10</sup> Other sectors of the economy such as the service industries (e.g., restaurants and food processing) have turned to undocumented workers as a method of delivering low-cost products.

There is a decreasing number of domestic unskilled workers entering the labor market each year because of the declining birth rate of the United States population and increasing educational levels and higher career ambitions of the domestic population.<sup>11</sup> Thus, while our economy becomes more dependent upon low-wage workers in the future, the United States will continue to see fewer unskilled domestic workers entering the labor market. Several labor economists have projected a shortage of 15 million unskilled workers in the United States by the end of this century.<sup>12</sup> This dependency on low-wage workers explains in part why our immigration laws have not been enforced over the last decade<sup>13</sup> and why employer sanctions will not be enforced if enacted by Congress. One has only to look to the agricultural sector and the inadequate enforcement of the Farm Labor Contractors Registration Act to know the fate of any employer sanctions legislation.<sup>14</sup>

#### B. Employer Sanctions Are Unenforceable

Even assuming that there is the federal will and budget to enforce employer sanctions, such legislation is not enforceable.

That is, since the legislation relies upon existing forms of identification which are readily available as forged documents, the law is guaranteed not to accomplish its stated goal.

Within three years the administration is required to implement "as necessary"<sup>15</sup> a more secure system of employment verification. The "as necessary" language might allow the current administration, which has voiced its opposition to a national identification card,<sup>16</sup> the flexibility to avoid implementing what it considers an expensive and questionable proposition.

Assuming that a secure system of worker identification or work verification could be created and would be enforced, would that change the hiring practices of the nation's employers? Undoubtedly some employers would comply with the new law. It is likely, however, that some employers do not currently hire undocumented aliens. To what degree will there be compliance with the law by those who now hire undocumented aliens? With some employers, the question of compliance may be related to the risk of detection and apprehension and the resultant penalty. The legislation pending in Congress has relatively minor sanctions for employers who violate the law.<sup>17</sup>



Those employers who hire undocumented workers in large numbers will probably not comply with the law until they see how serious the government is about enforcing it. They may believe that at the very least, they are entitled to one free bite of the apple before having to change their hiring habits.

Some unscrupulous employers may well take the risk of hiring undocumented workers and pay them even less than the minimum wage. Since these workers will be desperate for work, they will agree to any wages as long as the wages are better than they are in the source country. (Currently, a worker in Mexico paid minimum wage is receiving one-tenth of the United States minimum wage rate.) The result of employer sanctions legislation will be to drive undocumented workers further underground where they will be subject to more exploitation than they are now.

C. Employer Sanctions Legislation Will Have Negative Social and Economic Consequences

Immigrants are often made scapegoats for the economic ills of our country. One of the assumption underlying "Operation Jobs"<sup>18</sup> and the employer sanctions proposals is the disputed notion that aliens take jobs away from citizens, thus increasing unemploy-

ment of Americans.<sup>19</sup> Also, the passage of the employer sanctions legislation may well be interpreted as condoning anti-alien sentiment even against those immigrants lawfully present in the United States. Aliens are not protected by the provisions of the Civil Rights Act of 1964 which prohibit discrimination in employment.<sup>20</sup> Nor are they protected from conspiracies to deprive them or their civil rights as are citizens.<sup>21</sup> Unfortunately, the immigration reform proposals do nothing to end these invidious discriminations against aliens lawfully present in this country. If our current economic decline continues, increased scapegoating of this segment of our population will continue.

Hispanics and other foreign-appearing minority citizens are fearful that in spite of the civil rights acts they will suffer increased discrimination. Some employers may more carefully scrutinize their documents or avoid hiring them altogether in order to avoid risking the possibility of any sanction. Others, swayed by anti-alien prejudice, may reject all foreign-looking citizens.<sup>22</sup>

A work authorization card may help reduce, but will not entirely eliminate potential discrimination.<sup>23</sup> In fact, a work verification system may well blossom into a full-fledged national

identity card in spite of the admonitions contained in the legislation.<sup>24</sup> Local police officers are not authorized to enforce the Immigration and Naturalization Act except in rare instances.<sup>25</sup> However, some local police officers may harass Mexican-American citizens, requiring them to show the card to justify their status in the United States. The card eventually may become a universal identifier to be used for everything from birth to death certificates and each event in between. All citizens will suffer a loss of freedom because of this proposal. The cure is clearly worse than the disease.

Assuming that an employer scheme would substantially reduce the hiring of undocumented workers, there may be negative consequences for our economy. Certain sectors of our economy such as textiles, the garment industry, and some light manufacturing either will need protective legislation which will result in higher prices to the consumer, go bankrupt, or relocate abroad.<sup>26</sup> Other sectors, such as agriculture, food processing, and the restaurant industry will be forced to raise their prices to consumers.<sup>27</sup> As prices increase, demand for certain products and services will decrease--possibly causing unemployment in those and related fields

such as transportation and retail services. In an interdependent economy, a radical proposal like employer sanctions will have dramatic ripple effect throughout the economy.

Even assuming that there would be no drag on our economy because of dislocations caused to industries dependent upon low-wage labor, there are other direct costs associated with employer sanctions. Not only will the federal government have to increase its enforcement budget and staff, but implementation of the national worker identification card is estimated to cost approximately two billion dollars.<sup>28</sup> Additionally, the private sector will incur significant new costs not related to an increase in productivity.<sup>29</sup>

#### D. Inadequate Protections Against Discrimination

Assertions have been made that our present anti discrimination laws coupled with some minor provisions contained in H.R. 1510 are sufficient to protect Hispanics against discrimination. These assertions are misleading and incorrect.

Title VII has never contained sufficient protections to insure Hispanics are not discriminated against. Moreover, Title VII is not being effectively enforced. Statistics obtained from the EEOC clearly show that Hispanics presently do not see EEOC as an agency of recourse. For Fiscal Year 1982, 89, 264 charges were filed with the EEOC. Only 4,330 (4.9percent) were filed by



Hispanics. We do not have the statistics on how many cases were actually litigated by the EEOC. However, I can safely say that the numbers will be insignificant.

Title VII presently contains several loopholes which will further exacerbate discrimination if the employer sanctions provision pass. Title VII exempts from its coverage both small employers and seasonal employers. Statistics indicated that Hispanics are concentrated in these two areas. Therefore, the majority of the Hispanic community would be outside the protections of Title VII. Presently, employers of 14 or fewer employees are exempted from Title VII. Moreover, an employer must not only employ 15 or more employees, it must also employ them for 20 or more weeks a year in order to be covered by Title VII.

Another deficiency in our present laws is that discrimination based on alienage is permissible. What this means is that all those persons who are permanent residents and who have not naturalized are not covered. It is a well known fact that a significant number of Hispanics fall in this category. In addition, all those individuals who qualify for legalization will not be covered. Thus increasing the number of Hispanics left without any remedy against discrimination.

Title VII also exempts certain discriminatory practices. A "bona fide occupational qualification" reasonably necessary to the operation of the business is permissible. An employer may also institute practices which have a discriminatory effect if the practice has a relationship to job performance or is supported by a business necessity. These two exceptions have had a very detrimental impact in the Hispanic community. Federal courts

have upheld, as lawful, employer rules requiring employees to speak English on the job. These holdings have denied job opportunities to a significant number of Hispanics.

Title VII and the EEOC are not sufficient to redress present discrimination. The passage of employer sanctions will only make this inequity worse. As the debate proceeds, MALDEF will be providing further information. We want to make sure that the members of Congress and the American public realize the severe impact that employer sanctions will have in the Hispanic community.

Our views on the H-2 guest worker program, adjudication procedures and asylum have been previously addressed and I will not address them at this time.

1. For a concise history of employer sanctions bills see H.R. Rep. No. 890, 97th Cong., 2d. Sess. 36-38 (1982); S. Rep. No. 485, 97th Cong., 2d. Sess. 20-26 (1982).
2. S. 2222, 97th Cong., 2d. Sess. (1982) passed the Senate on August 17, 1982 and H.R. 6514, 97th Cong., 2d. Sess. (1982) passed the House Judiciary Committee on September 23, 1982.

Officially entitled the "Immigration Reform & Control Act of 1982," the bill is commonly referred to as "Simpson-Mazzoli," after the bills principal authors in the Senate and House.

While the same bills were introduced in each house, because of amendments they differ in some respects. Since this is primarily a policy argument, I will be ignoring minor differences in language between the two bills and critique the employer sanctions concept.

3. H.R. 6514, § 101 [§ 274A(b)(3)], S. 2222, § 101 [§ 274A(b)(3)].
4. Cf. H.R. 6514, Sec. 101 [Sec. 274A(c)(1)(b)] with S. 2222, Sec. 101 [Sec. 274A(c)(1)].

5. Farm Labor Contractor Registration Act, 7 U.S.C. 2045(g) (1974). For an evaluation of the Department of Labor's enforcement of this Act, see General Accounting Office, Comptroller General's Report to the Congress, Administrative Changes Needed to Reduce Employment of Illegal Aliens (Jan. 30, 1981).
6. Cf., D. North and M. Houston, "The Characteristics and Role of Illegal Aliens in the U.S. Labor Market: An Exploratory Study," 104 (1976).
7. General Accounting Office, Comptroller General's Report to the Congress, Prospects Dim for Effectively Enforcing Immigration Laws 8 (November 5, 1980).
8. General Accounting Office, Comptroller General's Report to the Subcommittee on Immigration and Refugee Policy, Senate Committee on the Judiciary. Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries. The report summarizes:

Although each country had laws penalizing employers of illegal aliens, such laws were not an effective deterrent to stemming illegal employment for primarily two reasons. First, employers either were able to evade responsibility for illegal employment or, once apprehended, were penalized too little to deter such acts. Second, the laws generally were not being effectively enforced because of strict legal constraints on investigations, non-communication between government agencies, lack of enforcement resolve, and lack of personnel.

Id. at 2.



9. See generally, W. Cornelius, Mexican and Caribbean Migration to the U.S.: The State of Current Knowledge and Priorities for Future Research (1982). W. Cornelius, Mexican Migration to the U.S.: Causes, Consequences and the U.S. Response, from Wilson to Carter 36-43 (1978).
10. See generally, S. Maram, Hispanic Workers in the Garment and Restaurant Industries in L.A. County (1980).
11. See, W. Cornelius, The Future of Mexican Immigrant in California: A New Perspective for Public Policy 2 (1980); C. Reynolds, Labor Market Projections for the United States and Mexico and Current Migration Controversies, 17 Food Research Institute Studies 136-141 (1979). See also, M. Wachter, The Labor Market and Illegal Immigration: The Outlook for the 1980's, 33 Industrial and Labor Relations Review 342-354 (1980).
12. Id. W. Cornelius, supra, at 2.
13. A White House Memorandum of March 4, 1981 analyzing immigration policy issues in discussing the Status Quo states:  

There is tacit understanding--one which is not known to the public--which allows illegal aliens to cross the border in search of work.
14. See supra notes 5 and 7.

15. H.R. 6514, § 101 [§ 274 A(c)(1)] S. 2222, § 101 [§ 274 A(c)(1)(A)].
16. Testimony of William French Sith, Attorney General, before the Senate Subcommittee on Immigration & Refugee Policy and the House Subcommittee on Immigration, Refugees, and International Law, July 30, 1981.
17. The House version creates a multi-tiered penalty structure:
  - (1) for the first 6 months there is a voluntary compliance period with no penalties;
  - (2) after 6 months, an employer is subject to a warning "citation" for a first violation of the law;
  - (3) for second violations, the employer is subject to a \$1,000 civil penalty for each alien hired;
  - (4) subsequent violations will subject the employers to \$2,000 civil fines for each alien;
  - (5) once a civil penalty has become final, a subsequent violation could lead to a maximum criminal penalty of \$3,000 fine and 1 year imprisonment for each alien.

The Senate version is tamer yet:

There is a \$1,000 penalty for the first violation, a \$2,000 for a subsequent violation and the criminal penalties of \$1,000 fine or 6 months in jail only attached when the government can prove a pattern or practice of violation of the act.

In contrast with the employers penalties, an undocumented alien who possesses false identification is subject to a \$5,000 fine and five year penalty. Sec. 102.

The Farm Labor Contractor Registration Act, 7 U.S.C. 2041 et. seq. currently has a maximum penalty of \$500 and 1 year for a first offense and \$10,000 fine and 3 year penalty for a subsequent offense. 7 U.S.C. § 2048 (1974).

18. Operation jobs was a series of highly visible factory raids during the week of April 26, 1982 in which I.N.S. apprehended approximately 5,600 workers in nine major cities, including Los Angeles where 800 undocumented workers were apprehended. The I.N.S. stressed that they were conducting the raids to open up high paying jobs for American workers. The average wage of the apprehended workers was \$4.81 per hour. The Los Angeles Times reported that in a follow-up survey in the Los Angeles area eighty percent of those apprehended had returned to their original jobs. Los Angeles Times, August 1, 1982.

MALDEF obtained a preliminary injunction against I.N.S. prohibiting it from carrying out "operation jobs" type factory raids in the Northern District of California. International Molders' and Allied Workers Local Union No. 164 vs. Nelson, U.S.D.Ct., N.D. Cal., No. C-82-1896 RPA, Sept. 16, 1982, Modified on Appeal, No. 82-4538, Oct. 19, 1982.

19. See W. Cornelius, Mexican Immigrants and Southern California: A summary of Current Knowledge 33-45 (1982).
20. Title VII of the 1964 Civil Rights Act, 42 U.S.C. 2000e et. seq. (1964), prohibits employment discrimination on the grounds of "national origin." In *Espinosa v. Farah Mfg. Co.*, 414 U.S. 86 (1973), the Supreme Court held that an employer's policy against the employment of aliens did not violate Title VII.
21. 18 U.S.C. 241 ("citizens").
22. Institute for Public Representation, Georgetown University Law Center, Discriminatory Effects of Employer Sanctions Programs Under Consideration by the Select Commission on Immigration and Refugee Policy (1980) reprinted in SCIRP, U.S. Immigration Policy and the National Interest, Appendix 6, p. 489 (1981).
23. Id.; Notre Dame University Law School, Center for the Study of Human Rights Employer Sanctions: Research Study (1980) reprinted in SCIRP, U.S. Immigration Policy and the National Interest, Appendix 6, p. 568.
24. H.R. 6514, § 101 [§ 274(c)(1)(B)].
25. See 8 U.S.C. 1324(b)(1952) (specific authorization for felony alien smuggling); but see, *Gonzales v. City of Peoria*, Arizona, Civ. 78-6181 (D. Ariz., April 19, 1982, on appeal to the 9th Circuit Court of Appeals).



26. R. Waldinger, The Case Against Employer Sanctions, (Joint Center for Urban Studies of MIT and Harvard University) 8-9 (1980).
27. Id.
28. Testimony of Doris Meisner, Acting Commissioner of the Immigration and Naturalization Service, before the Senate Subcommittee on Immigration and Refugee Policy, September 30, 1981.
29. The Social Security Administration indicates that over 40 million persons took new jobs or entered or reentered the labor market in 1977. Assuming that it would take 15 minutes (OMB has estimated 30) per hire for an employer to check the proper documentation and make the necessary certification, it will cost the private sector 10 million hours per year to comply with the law. At a conservative estimate of \$10 per hour, that amounts to \$100 million dollars per year in non-productive work not counting record-filling (the hiring records must be kept for 5 years) and time allocated for inspections.

Mr. MAZZOLI. We will have questions and get back to what you are saying. We welcome Arnold Torres, the national executive director of LULAC.

Your statement will be made a part of the record.

Mr. TORRES. Thank you. I appreciate the opportunity to come before this subcommittee.

I am very pleased to see that your new Member from Florida is very aggressive with his questions and has demonstrated a great deal of interest in the subject. He appears to have started quickly on this subject and understands the complexities that surround this debate.

I would like to begin by saying that we are still very much in opposition to this legislation. We do not regard it as very sound public policy, but we also would add with sincerity that last year's process, last year's experience, taught everyone in this debate something, for we certainly learned a great deal. Hopefully everyone has been educated and as a result perhaps we can work together this time to try and work out our differences.

However, it is important that we add, because it has been alleged that we are too concerned with passing perfect legislation, that if perfect legislation is not passed then nothing should be approved.

We believe our interest for sound effective public policy not be sacrificed for legislation which will create more problems than provide remedies. Last year we testified on 10 or 12 occasions before House and Senate subcommittees. We indicated our very detailed opposition to the bill and despite the productive and educational experience that we all went through last year, there are many things that continue to bother us significantly as we enter this years debate.

The Hispanic community is viewed as vehemently opposing any reform of U.S. immigration law. We do not. We simply have a difference of opinion as to how to do it. Despite the many times that we did testify in these Chambers of Congress with regard to our positions on the bill, there were many different individuals who were proponents of the bill that continued to try and represent our perspectives, to speak for us, and this continues to be the situation with regard to the discriminatory claims of sanctions, with regard to how the program is going to work. Perhaps what is of major concern to us is the contention that the bill is a jobs bill.

I was able to talk to Congressman Smith out in the hall briefly. He raised the issue and made the contention that the problems in Liberty City and Miami are a good example of the displacement of black youth by Haitian refugees and other immigrants.

However, I think he forgot to take into consideration that the problems of the black community in Miami have been in place for decades. After the 1979 riots, when then President Carter proposed \$30 to \$50 million for that area to assist in its development, Mr. Reagan was elected and withdrew this assistance from the black community in Miami and, consequently, we saw Liberty City blow up, and as the Congressman from Florida indicated, again had unrest just yesterday.

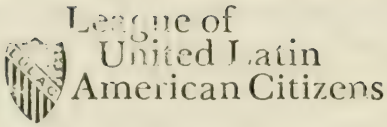
We still believe there is a great deal of ignorance out there, a lot of contentions that are made that seriously hinder a productive and honest exchange as to how to deal with the immigration issue.

There are two major issues that in our opinion have a very, very negative impact on this issue this year, and that is the new initiatives that have been developed by the INS with regard to local law enforcement and the provisions to begin to, in our opinion, purge social security records to identify and locate aliens who are in the country illegally.

We regard these new policy initiatives as creating additional problems in our community and will hinder our efforts to work on this legislation.

Thank you very much, Mr. Chairman.

[The complete statements follow:]



*Office of National President*  
TONY BONILLA

TESTIMONY

BEFORE

U.S. HOUSE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

REGARDING

H.R. 1510 - IMMIGRATION/REFUGEE POLICY REFORM LEGISLATION

PRESENTED BY

MR. ARNOLDO S. TORRES  
NATIONAL EXECUTIVE DIRECTOR  
LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC)

MARCH 14, 1983

18-556 2561



GOOD MORNING, MEMBERS OF THE HOUSE SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW, MY NAME IS ARNOLDO S. TORRES AND I AM THE NATIONAL EXECUTIVE DIRECTOR OF THE LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC). LULAC IS THIS COUNTRY'S OLDEST AND LARGEST HISPANIC ORGANIZATION WITH 110,000 MEMBERS IN 45 STATES. OUR ACTIVE PARTICIPATION IN THE IMMIGRATION DEBATE OVER THE LAST THREE YEARS IS WELL KNOWN TO THE CHAIRMAN OF THIS SUBCOMMITTEE, AND WE APPRECIATE THIS OPPORTUNITY TO ONCE AGAIN PRESENT OUR PERSPECTIVES ON THE PROPOSED LEGISLATIVE IMMIGRATION REFORM PACKAGE.

LAST YEAR, WE TESTIFIED ON SOME TEN OCCASIONS BEFORE HOUSE AND SENATE SUBCOMMITTEES ON THE SIMPSON-MAZZOLI IMMIGRATION REFORM LEGISLATION. DURING THESE HEARINGS, LULAC PRESENTED CLEARLY ITS DETAILED OPPOSITION TO SIMPSON-MAZZOLI AND AGAIN STRONGLY VOICES ITS CATEGORICAL OPPOSITION TO THE PRESENT LEGISLATIVE PACKAGE. OUR TESTIMONY OUTLINES OUR REASONS FOR OPPOSITION, HOWEVER, WE WOULD LIKE TO FOCUS OUR INITIAL COMMENTS ON ISSUES THAT GREATLY TROUBLE US.

LULAC AND THE HISPANIC COMMUNITY ARE, AND HAVE BEEN, FIRMLY IN SUPPORT OF REFORMING U.S. IMMIGRATION AND REFUGEE POLICY. WE HAVE NEVER INDICATED SUPPORT OR INTEREST IN HAVING AN OPEN BORDER POLICY WITH UNLIMITED MIGRATION TO THE UNITED STATES. DESPITE THE MANY TIMES WE HAVE TESTIFIED ON THESE MATTERS CERTAIN IRRESPONSIBLE PROPONENTS OF SIMPSON-MAZZOLI HAVE CHOSEN TO KNOWINGLY MISREPRESENT OUR POSITIONS AND CONCERNS. IN FACT, SOME PERSONS HAVE TAKEN UPON THEMSELVES TO SPEAK FOR HISPANIC ORGANIZATIONS AND OUR COMMUNITY, AS WELL AS TO TOTALLY DISCOUNT OUR EXPERIENCES REGARDING DISCRIMINATORY TREATMENT. WE ALSO WERE EXPOSED TO A BOMBARDMENT OF DESPERATE AND PANIC PREDICTIONS AND CONTENTIONS, FEARFUL STORIES OF THE NEGATIVE IMPACT THE UNDOCUMENTED WERE HAVING ON AMERICAN SOCIETY. THE PUBLIC WAS TOLD THAT THEIR ECONOMIC DOES WERE CAUSED LARGELY IN PART BY THE PRESENCE OF UNDOCUMENTED WORKERS AND THAT IF SIMPSON-MAZZOLI WAS PASSED IT WOULD CREATE MILLIONS OF JOBS. PERHAPS MOST DISTURBING WAS THAT MEMBERS OF CONGRESS, WHOM WE BELIEVED TO BE RESPONSIBLE REPRESENTATIVES, ALSO CHOSE TO CAST THIS IMPRESSION. IN DOING SO, THESE MEMBERS APPEAR TO HAVE MADE A CONSCIOUS EFFORT TO RADICALLY SIMPLIFY THE ISSUE AND APPEAL TO THE DESPERATE EMOTIONAL STATE OF THE UNEMPLOYED AMERICAN. FURTHERMORE, THEY CHOOSE TO TOTALLY IGNORE THE REAL COMPLEXITIES OF OUR ECONOMIC DIFFICULTIES, THUS MAKING THE UNDOCUMENTED THE SCAPEGOAT. CLEARLY, NO ONE BENEFITS FROM SUCH DEMAGOGUERY

AND ONLY THE DEBATE IS SIGNIFICANTLY HURT IN ATTEMPTING TO REACH SOME POSSIBLE SOLUTIONS.

IN ADDITION, WE HAVE ALSO READ WITH GREAT INTEREST OF THE EXAGGERATED COSTS AND CONSEQUENCES OF A LEGALIZATION PROGRAM. ONE COULD EASILY BE LED TO BELIEVE, BY READING SUCH ACCOUNTS, THAT AMERICAN SOCIETY WILL BE IN UNDATED BY CRIMINALS AND WELFARE CHEATS, ALL POSED TO TAKE FROM OUR SYSTEM OF DEMOCRACY AND NOT WILLING TO CONTRIBUTE.

IT IS CONTRADICTORY AND ILLOGICAL TO CONTEND THAT THE UNDOCUMENTED ARE TAKING JOBS AWAY FROM AMERICANS, WHILE AT THE SAME TIME ON THE PUBLIC TROUGH. YET, IRRESPONSIBLE ELEMENTS HAVE AGAIN CHOSEN TO APPEAL TO THE MOST BASE AND PREJUDICIAL TENDENCIES OF HUMAN CHARACTER BY INDICATING THAT FOREIGNERS ARE DISPLACING AND TAKING AWAY BENEFITS FROM AMERICAN CITIZENS. AGAIN, WE FIND SOME MEMBERS OF CONGRESS ALL TOO WILLING TO IDENTIFY WITH THIS ATTITUDE AND THUS THE EFFORT TO DEVELOP SOUND IMMIGRATION POLICY IS HINDERED.

DESPITE AND INSPITE OF THESE PREVAILING ATTITUDES, IULAC HAS CONTINUED TO PRESENT ITS CONCERNS IN A RESPONSIBLE AND REASONABLE FASHION. WE HAVE NOT CHOSEN TO RESPOND TO IRRESPONSIBLE AND POOR LEADERSHIP WITH QUANTITIES OF THE SAME RATHER WE HAVE ATTEMPTED TO TAKE INTO CONSIDERATION THE NEED FOR EFFECTIVE SOUND PUBLIC POLICY WHICH WOULD AND COULD IMPACT POSITIVELY ON THE ILLEGAL IMMIGRATION ISSUE. HOWEVER, IT IS VIRTUALLY IMPOSSIBLE FOR REASONABLE PEOPLE TO SERIOUSLY ADDRESS THIS MATTER WITHOUT INCLUDING THE PUSH FACTORS AND THE SIGNIFICANT ROLE THEY PLAY IN POPULATION MOVEMENTS.

ONE OF THE MAJOR ISSUES WHICH THE LEAGUE HAS ENDEAVORED TO ATTEND TO HAVE INCORPORATED IN THE DEBATE ON IMMIGRATION HAS BEEN THE INTERNATIONAL FACTORS WHICH CONTRIBUTE TO REFUGEE AND UNDOCUMENTED FLOWS TO THE U.S. THE ECONOMIC AND POLITICAL INSTABILITIES OF UNDERDEVELOPED AND DEVELOPING COUNTRIES HAVE BECOME "PUSH FACTORS" WHICH OFTEN TIMES FORCE PEOPLE FROM THESE COUNTRIES TO FLEE FOR SURVIVAL. THROUGHOUT THE DEBATE IN THE SENATE, VARIOUS ALLUDS ALLUDED TO THIS REALITY, HOWEVER, THERE WAS NO EFFORT TO ADDRESS THESE FACTORS IN THE LEGISLATION. IF THESE INSTABILITIES CONTINUE IT IS INCONCEIVABLE THAT ANY PROVISIONS CONTAINED IN HR1510 CAN OR WILL DEAL WITH

THEM. THIS LEGISLATION ATTEMPTS TO DEAL WITH LEGAL IMMIGRATION AND REFUGES ONCE THEY ARE AT OUR BORDERS OR SHORES, OR AFTER THEY HAVE ENTERED THE COUNTRY. A MUCH MORE LOGICAL AND EFFECTIVE APPROACH IS TO DEAL WITH THE ORIGIN OF THE PROBLEM WHICH IS IN THE SENDING COUNTRIES. SURELY EMPLOYER SANCTIONS AND OTHER PROVISIONS OF THE BILL WILL NOT STOP THE FLOWS OF PEOPLE FLEEING FOR THEIR LIVES FROM EL SALVADOR. HOWEVER, A FOREIGN POLICY BY THIS COUNTRY WHICH IS AIMED AT DECREASING THE LEVEL OF CONFLICT AS OPPOSED TO ESCALATING IT, WOULD GO MUCH FURTHER IN HAVING SALVADORANS REMAIN IN THEIR COUNTRY. THE SAME IS TRUE FOR THE CONDITIONS WHICH CONFRONT THE PEOPLE OF HAITI FLEEING TO THIS COUNTRY. WE MUST WORK THROUGH OUR FOREIGN POLICY TO ALLEVIATE THE PROBLEMS IN THE SENDING COUNTRIES FOR THERE IS NO OTHER WAY TO RATIONALLY ADDRESS THIS COMPLEX ISSUE OF POPULATION MOVEMENTS.

## EMPLOYER SANCTIONS AND EMPLOYMENT DISCRIMINATION

THE EMPLOYER SANCTIONS PROVISIONS, TITLE I OF THE PROPOSED IMMIGRATION REFORM AND CONTROL ACT OF 1982 (H.R. 1357), THREATENS TO ERECT ADDITIONAL BARRIERS TO EQUAL EMPLOYMENT OPPORTUNITIES FOR HISPANICS. ILLEGAL IMMIGRATION IN THIS COUNTRY HAS LONG BEEN PERCEIVED BY AMERICANS AS AN HISPANIC PHENOMENA. "OPERATION JOBS," CONDUCTED BY THE IMMIGRATION AND NATURALIZATION SERVICE IN APRIL ILLUSTRATES THIS POINT. ILLEGAL CANADIAN AND EUROPEAN IMMIGRANTS SURVIVED "OPERATION JOBS" VIRGULALLY UNSCATHED, WHILE HISPANICS, AND PERSONS OF COLOR BORE ITS WRATH. THE INSTITUTION OF EMPLOYER SANCTIONS, FOR THE HIRING OF UNDOCUMENTED WORKERS, PROMISES TO HAVE THE SAME RESULT. HISPANICS WILL BE MOST NOTABLY SUSPECTED OF ILLEGAL STATUS.

AS PRESENTLY PROPOSED THE IMMIGRATION REFORM AND CONTROL ACT CONTAINS NO STATUTORY LANGUAGE WHICH EFFECTIVELY COUNTERS THE THREAT OF INCREASED EMPLOYMENT DISCRIMINATION, TOWARD HISPANICS, WHICH IT ENGENDERS. IT SIMPLY CONTAINS REPORT LANGUAGE WHICH IS NOT DESIGNED TO PREVENT EMPLOYMENT DISCRIMINATION BUT SIMPLY REPORT IT AFTER THE FACT. FURTHER, THE BILL PROVIDES, IN PART A SECTION 274 (A) (1) (B), THAT "IT IS UNLAWFUL TO HIRE FOR EMPLOYMENT IN THE UNITED STATES AN INDIVIDUAL WITHOUT . . ." VERIFYING THAT THE INDIVIDUAL IS ELIGIBLE FOR EMPLOYMENT, AS BY BEING A CITIZEN OR LEGAL RESIDENT. THE BILL HOWEVER, DOES NOT PROVIDE FOR ANY SYSTEM OF MONITORING TO ENSURE THAT ALL INDIVIDUALS, NOT JUST HISPANICS ARE REQUESTED THE REQUISITE DOCUMENTATION BEFORE EMPLOYMENT. EVEN ASSUMING THAT FIGURES ON THE OCCURRENCE OF EMPLOYMENT DISCRIMINATION, OR UNEQUAL TREATMENT, BECOME AVAILABLE, THE ABSENCE OF AN INSTITUTIONALIZED MONITORING SYSTEM WOULD LOGICALLY RENDER THOSE FIGURES UNRELIABLE. IN THE INTERIM, THREE YEARS WILL ELAPSE DURING WHICH TIME HISPANICS MAY BE DENIED EQUAL EMPLOYMENT OPPORTUNITIES.

THE POTENTIAL FOR INCREASED EMPLOYMENT DISCRIMINATION TOWARD HISPANICS WHICH THE BILL ENGENDERS IS OF PARTICULAR SIGNIFICANCE TODAY, IN THE WAKE OF A DEPRIORITIZATION OF CIVIL RIGHTS ENFORCEMENT IN THIS COUNTRY. WHAT FOLLOWS IS A BRIEF EXPOSITION ON THE STATE OF EQUAL OPPORTUNITY LAW ENFORCEMENT IN THIS NATION. THE CONCLUSION TO BE GLEANED FROM THE FOLLOWING ANALYSIS IS THAT NO GUARANTEE OF PROMPT REDRESS EXISTS FOR THOSE HISPANICS WHO, AS A CONSEQUENCE OF THE ADVENT OF EMPLOYER SANCTIONS, ARE WRONGFULLY REFUSED EMPLOYMENT, OR OTHERWISE DENIED EQUAL EMPLOYMENT OPPORTUNITY.



## A. THE STATE OF EEO LAW ENFORCEMENT

THE COMMISSION ON CIVIL RIGHTS IN ITS JUNE 1982 REPORT NOTED THAT FUNDING AND STAFFING CUTS IN THE EEOC HAVE RESULTED IN A RETARDATION OF THE EEOC'S PROGRESS TOWARD PROVIDING COMPLAINANTS WITH PROMPT RELIEF, ADDRESSING CLASS AND SYSTEMATIC DISCRIMINATION PROBLEMS AND ELIMINATING INCONSISTENT EQUAL EMPLOYMENT REQUIREMENTS.

AS THE TABLE BELOW SHOWS, EEOC'S SYSTEMATIC SPENDING POWER IS \$6 MILLION (5 PERCENT) LOWER THAN IN FY 80.

EEOC BUDGET TOTALS AND TOTALS IN CONSTANT DOLLARS: 1980-1983 (PROPOSED)  
(IN THOUSANDS OF DOLLARS)

<u>Fiscal Year</u>	<u>Appropriation a/ (annualized)</u>	<u>In 1980 Constant Dollars</u>
1980	124,562	124,562
1981	137,875	126,028
1982 (Budget Request)	140,389	119,041
1982 (Continuing Resolution)	139,889 b/	118,617
1983 (Budget Request)	144,937	114,536

AS A RESULT OF SPENDING CUTS THE EEOC IN FY 81 CUTBACK THE NUMBER OF PLANNED CLASS COMPLAINT INVESTIGATION OF BROAD PATTERNS AND PRACTICES OF DISCRIMINATION BY 13 PERCENT, AND EXPECTS TO KEEP AT THIS LOWER LEVEL IN FY 83.

ACCORDING TO THE COMMISSION'S REPORT, THE EEOC PLANS FURTHER CUTBACKS IN SERVICES, SUCH AS LABOR FORCE DATA PROCESSING. SUCH CUTBACKS WOULD RESTRICT THE EEOC'S PLANS TO INCLUDE IN ITS TARGETS OTHER "EMPLOYERS," SUCH

A/ FIGURES REPRESENT WHAT EEOC COULD SPEND DURING A WHOLE FISCAL YEAR UNDER EACH SPENDING CEILING.

B/ THIS FIGURE DOES NOT INCLUDE A \$4.2 MILLION SUPPLEMENTAL APPROPRIATION EEOC EXPECTS DURING THE FOURTH QUARTER OF FY 82 BECAUSE THIS APPROPRIATION HAS NOT BEEN ENACTED. MARY STRINGER, SUPERVISORY BUDGET ANALYST, EEOC, TELEPHONE INTERVIEW, MARCH 11, 1982.

AS UNIONS AND MEMBERSHIP COMMITTEES THAT HAVE HAD MANY OF CRIMINATION CHARGES FILED AGAINST THEM.

BECAUSE OF BUDGETARY CONSTRAINTS, THE EEOC IN FY 83 EXPECTS TO APPROVE 14 PERCENT FEWER NEW SUITS THAN IT APPROVED IN FY 81, EVEN THOUGH A RISING COMPLAINT LOAD INDICATES A GREATER NEED FOR LITIGATION. THE AGENCY MAY ALSO HAVE TO REDUCE THE NUMBER OF SUITS IT ACTUALLY FILES IN FY 83.

AS THE TABLE BELOW FROM THE COMMISSION'S JUNE 1982 REPORT SHOWS, EEOC'S STAFF RESOURCES HAVE BEEN DECLINING STEADILY. THE AGENCY HAS LOST 461 AUTHORIZED POSITIONS SINCE FY 80 AND IS CURRENTLY BELOW ITS AUTHORIZED LEVEL. CLERICAL AND FIELD OFFICE ATTORNEY POSITIONS HAVE BEEN AFFECTED MOST HEAVILY, SLOWING DOWN THE PRODUCTION OF DOCUMENTS AND WORK ON LEGAL CASES. THE EEOC PLANS FURTHER CUTBACKS IN FY 83, FOR EXPERT WITNESSES AND OTHER SUPPORT SERVICES FOR CASES IN LITIGATION. AS A CONSEQUENCE OF STAFF

EEOC Full-Time, Permanent Staff Positions 1980-83 (Proposed)

<u>Fiscal Year</u>	<u>Authorized</u>	<u>Actual</u>
1980	3,777	3,433
1981	3,468	3,416
1982 (Request)	3,468	_____ a/
1982 (Continuing Resolution)	3,316	_____ a/
1983 (Request)	3,278	_____

SHORTAGES THE EEOC IN FY 81 ESTIMATED IT WOULD TAKE 6-8 MONTHS TO RESOLVE ALL TITLE VIII COMPLAINTS ON HAND. WITH YET FEWER STAFF ON HAND, ITS PRESENT FY 82 ESTIMATE IS A MONTH LONGER, AND ITS FY 83 ESTIMATE IS STILL ANOTHER MONTH LONGER.

A/ EEOC FAILED TO PROVIDE REQUESTED DATA ON ACTUAL STAFFING LEVELS. SEE EDWARD MORGAN, DIRECTOR, OFFICE OF CONGRESSIONAL AFFAIRS, EEOC, LETTER TO JOHN HOPE II, ACTING STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS, MAY 7, 1982.

STAFF SHORTAGES HAVE LED THE EEOC TO ASSUME A PROGRESSIVELY MORE PASSIVE ENFORCEMENT ROLE. LACK OF SUFFICIENT FUNDING AND STAFFING HAS DIMINISHED THE AGENCIES ABILITY TO CONDUCT FEDERAL CIVIL RIGHTS COMPLIANCE REVIEWS. STAFF ALLOCATIONS HAVE LEAD TO AN EMPHASIS ON INEFFICIENT INDIVIDUAL COMPLAINT INVESTIGATION ACTIVITIES, ALBEIT AT THE REDUCED LEVEL SHOWN.

THE RESULTING CUTBACKS IN THE EEOC'S ACTIVITIES TARGETED AT SYSTEMIC DISCRIMINATION, INEVITABLY PLACES THE BURDEN OF INITIATING ENFORCEMENT ACTION ON THE VICTIMS OF DISCRIMINATION, PERSONS OFTEN LACKING THE REQUISITE RESOURCES OF FAMILIARIZATION WITH THE LAW OR WITH THE REQUIREMENTS OF PROGRAM OPERATIONS. THE RIGHTS OF VICTIMS WHO DO NOT KNOW HOW TO FILE COMPLAINTS OR FEAR REPRISAL FOR DOING SO, HAVE BEEN LEFT UNPROTECTED.

## CONCLUSION

THE EMPLOYER SANCTIONS PROVISIONS PRESENTLY CONTAINED WITHIN THE PROPOSED IMMIGRATION REFORM AND CONTROL ACT, WILL ONLY FURTHER EXACERBATE THE EXISTING PROBLEMS THE CURRENT BUDGET REDUCTIONS ARE CREATING FOR DISADVANTAGED AND OSTRACIZED AMERICAN CITIZENS AND LEGAL RESIDENTS. THE CONSEQUENCE OF THE PRESENT LEGISLATION WILL BE TO ERECT ADDITIONAL BARRIERS FOR PEOPLE OUTSIDE THE AMERICAN MAINSTREAM.

IT SHOULD BE NOTED THAT WHILE THE PRESENT BUDGETARY CUTBACKS HAVE LIMITED THE EEOC'S CAPACITY TO INITIATE SUITS, THE NUMBER OF NATIONAL ORIGIN COMPLAINTS FILED WITH THE AGENCY HAVE BEEN ON THE INCREASE. (SEE TABLE BELOW)

## COMPLAINTS FILED WITH THE EEOC

Annual Reports	Total Charges	National Origin Charges	Percent of Total
1966	6,133	143	2.3
1973	77,242	12,377	16
1976	103,067	10,622	10.3
1979	79,084	7,913	10
1980	90,325	8,568	9.5
1981	94,460	9,235	9.89

HISPANIC COMPLAINANTS COMPRISE AN OVERWHELMING MAJORITY OF THE TOTAL PERCENTAGE OF NATIONAL ORIGIN CHARGES FILED. THE INABILITY OF THE EEOC TO ADEQUATELY EFFECTUATE ITS MANDATE WILL HAVE ITS MOST DIRECT CONSEQUENCE ON THE HISPANIC COMMUNITY, THE GROUP BEING NOW ASKED TO BEAR THE EMPLOYMENT RISKS ASSOCIATED WITH THIS LEGISLATION.



## LEGALIZATION

### ADJUSTMENT OF STATUS PROGRAM:

LEGALIZATION HAS BEEN CAST ON MANY FRONTS AS AN UNFAIR PROGRAM GRANTING AMNESTY TO LAW BREAKERS, AS A BLANK CHECK FOR "ILLEGALS" TO GET ON THE ENTITLEMENT ROLLS, AND AS AN UNBEARABLE STRAIN ON STATE AND LOCAL GOVERNMENTS. THE PURPOSE OF A LEGALIZATION PROGRAM IS AT LEAST TWO-FOLD. FIRST OF ALL, LEGALIZATION IS TO ALLOW THOSE PERSONS WHO ARE PRESENTLY HERE WITHOUT THE BENEFIT OF DOCUMENTS THE OPPORTUNITY TO APPLY TO THE ATTORNEY GENERAL FOR AN ADJUSTMENT OF THEIR STATUS. SECONDLY, THE PROGRAM SEEKS TO IDENTIFY OR REGISTER THOSE SAME PERSONS SO AS TO MINIMIZE THE LEVEL OF EXPLOITATION ATTENDANT TO AN UNDOCUMENTED STATUS AND TO EXTEND THE BENEFITS OF CITIZENSHIP OR LEGAL RESIDENCY TO THOSE PERSONS.

EXISTING IMMIGRATION LAW PROHIBITS THE GRANTING OF U.S. RESIDENCY, PERMANENT OR TEMPORARY, TO PERSONS WHO ARE LIKELY TO BECOME PUBLIC CHARGES. THE PROPOSED LEGISLATION, HR1510 HAS SIMILAR RESTRICTIONS FOR THOSE SEEKING AN ADJUSTMENT OF THEIR STATUS THROUGH THE LEGALIZATION PROGRAM.

LULAC CONTENDS THAT ANY LEGALIZATION WHICH MAKES ADJUSTMENT OF STATUS DISCRETIONARY, THAT IS WITHIN THE DISCRETION OF THE ATTORNEY GENERAL OF THE UNITED STATES OR HIS/HER REPRESENTATIVES DOOMS THE PROGRAM FROM THE OUTSET. LEGALIZATION MUST BE A RIGHT CREATED BY POSITIVE LEGISLATION, NOT A DISCRETIONARY ENFRANCHISEMENT SUBJECT TO POLITICAL INFLUENCES. TO THAT END, LULAC ASSERTS THAT POSITIVE LEGISLATION CREATE A COMMISSION, REPRESENTATIVE OF THE IMPACTED GROUPS, WHICH IS EMPOWERED WITH OVERSIGHT AUTHORITY AND THE DEVELOPMENT AND IMPLEMENTATION OF RULES AND REGULATIONS FOR SUCH A PROGRAM.

INITIALLY, IT SHOULD BE MAKE ABUNDANTLY CLEAR THAT A TWO TIER TYPE ADJUSTMENT OF STATUS PROGRAM WHICH DISABLES PARTICIPANTS FROM BOTH NECESSARY AND PRACTICAL ACCESS TO ENTITLEMENT PROGRAMS WILL PERPETUATE THE SUB-CLASS OF PERSONS LEGALIZATION IS INTENDED TO ERADICATE. FURTHER, DIALOGUE NOW AS IN THE PAST SUGGESTS THAT IT IS QUESTIONABLE THAT ONLY THOSE WHO ADVOCATE

ON BEHALF OF HISPANICS THROUGH THE LEGISLATIVE PROCESS, SUCH AS IULAC, FIND THEMSELVES ALONE HIGHLIGHTING BOTH THE INTENDED PURPOSE AND THE BENEFITS WHICH FLOW FROM ERADICATING A SUB-CLASS WHOSE EXISTENCE IS NOT IN THE BEST INTEREST OF THE COUNTRY IN GENERAL NOR OF HISPANICS IN PARTICULAR.

THE BUREAU OF THE CENSUS IN ITS 1977 REPORT TO THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY, ESTIMATED THAT APPROXIMATELY THREE TO SIX MILLION PERSONS LIVE AND WORK IN THIS COUNTRY WITHOUT THE BENEFIT OF DOCUMENTS WHICH WOULD IDENTIFY THEM AS "LEGALLY ADMITTED ALIENS." THEIR PRESENCE AND CONTINUED ENTRY ARE DUE TO SEVERAL FACTORS, NOT THE LEAST OF WHICH HAS BEEN AN IMMIGRATION POLICY THAT HAS CONVENIENTLY FLUCTUATED TO SATISFY THE NEEDS OF INDUSTRIAL AND AGRICULTURAL DEVELOPMENT IN THIS COUNTRY. DURING TIMES OF ECONOMIC PROSPERITY WHEN THE DEMAND FOR MINIMALLY SKILLED AND UNSKILLED LABOR HAS BEEN SIGNIFICANT, THAT NEED HAS BEEN REFLECTED BY THE ABSENCE OF ANY REFERENCE TO THE SO-CALLED NEGATIVE IMPACT OF ILLEGAL IMMIGRATION. CONVERSELY, DURING TIMES OF ECONOMIC HARDSHIP, AS NOW, A RESTRICTIONIST IMMIGRATION POLICY HAS PROMPTED BOTH THE ROUNDING UP OF "PERCEIVED ILLEGALS" AND MASS DEPORTATIONS. THESE PERCEIVED ILLEGALS MAY IN FACT BE LEGAL RESIDENTS. AT MINIMUM, THEY ARE PERSONS ENTITLED TO SHARE THE BENEFITS OF A NATIONAL DEVELOPMENT THEY HAVE CONTRIBUTED TO BY COMING HERE WHEN NEEDED AND WORKING WHERE NEEDED. CONVENIENTLY, IT IS ALL TOO OFTEN FORGOTTEN, AS THIS COUNTRY'S HISTORY DOCUMENTS, THAT CONSTITUTIONAL PROTECTIONS ATTACH TO ALL PERSONS WITHIN OUR BORDERS, NOT JUST TO THOSE FORTUNATE ENOUGH TO HAVE COME AT THE RIGHT TIME AND PLACE.

POLITICAL EXPEDIENCIES SERVE NO REAL PURPOSE OTHER THAN PROMOTING SHORT-SIGHTED PUBLIC POLICY UNDER THE GUISE OF REASONED CONSTRUCTIVE REFORM. SELDOM DO POLITICAL EXPEDIENCIES ADDRESS THE REAL PROBLEMS OF DISGRUNTLED AND UNEMPLOYED CONSTITUENCIES. RESTRICTIONIST ARGUMENTS ALSO ARE CONVENIENT FOR THEY SEEK TO MAINTAIN THE STATUS QUO. NOW AS IN THE PAST, RESTRICTIONISTS ARGUE THAT EACH UNDOCUMENTED WORKER DISPLACES AN AMERICAN IN NEED OF WORK WHILE NOT PROVIDING ANY INCENTIVE FOR BETTERING EITHER WORKING CONDITIONS OR WAGES IN THOSE INDUSTRIES IN WHICH EMPLOYMENT OF UNDOCUMENTED WORKERS PREDOMINATES.

THE WASHINGTON POST IN ITS AUGUST 11TH EDITORIAL "LAW AND THE ILLEGAL" REITERATES THAT RESTRICTIONIST VIEW AND CITES AS WELL AN ESTIMATE THAT 4 TO 9 MILLION UNDOCUMENTED WORKERS ARE IN THIS COUNTRY. ASSUMING THAT THE POST'S CONTENTION WAS ACTED ON AND APPREHENSION AND DEPORTATION OF ALL ILLEGALS WERE POSSIBLE, 9 MILLION OF THIS COUNTRY'S UNEMPLOYED WOULD THEN HAVE JOB OPPORTUNITIES.

CURIOUSLY, THE ADMINISTRATION IN ITS VERSION OF THE RESTRICTIONIST VIEW, ARGUES THAT TO LEGALIZE THE UNDOCUMENTED WORKERS, WILL GIVE THE VERY PEOPLE WHOM OTHER RESTRICTIONISTS AND GOVERNMENT AGENCIES IDENTIFY AS TAKING JOBS FROM UNEMPLOYED AMERICANS, THE SIGNAL THAT THEY CAN NOW QUIT THEIR JOBS AND GO ON WELFARE. IT IS ABSURD TO ARGUE THAT PEOPLE WHO ARE WORKING FULL TIME ON ONE HAND, ARE ALSO ROBBING THE NATION'S WELFARE COFFERS ON THE OTHER.

CONVENIENTLY FORGOTTEN ARE THE NUMEROUS CONTRIBUTIONS MADE BY THESE PERSONS TOWARDS THE NATIONAL INTEREST. THEIR CONTRIBUTION STIMULATES EMPLOYMENT AS WELL AS TAX REVENUES. TO DATE THE ADMINISTRATION, CONGRESSIONAL BUDGET OFFICE AND RESTRICTIONIST SUPPORTERS HAVE BEEN SILENT ON THE ISSUE OF REVENUE IMPACT TO THE FEDERAL BUDGET. THIS SILENCE TOO IS CONVENIENT.

THIS REVENUE ASSESSMENT DOES NOT PURPORT TO ASSESS THE TOTAL IMPACT BUT RATHER SUPPLIES ONE ASPECT WHICH HERETOFORE HAS BEEN ABSENT.

THE FOLLOWING TAX CONTRIBUTION AND/OR PAYMENT PROFILE, PER INCOME DOLLAR IS BASED ON AN UNDOCUMENTED WORKER. WE ASSUME THE FOLLOWING:

- o THAT THERE IS A TOTAL OF 6 MILLION UNDOCUMENTED PERSON WITHIN THIS COUNTRY'S BORDERS
- o THAT OF THOSE 6 MILLION, 80% ARE EARNING \$4.81 PER HOUR AND 20% ARE EARNING \$9.00 PER HOUR
- o THAT THESE PERSONS ARE WORKING
- o THAT THESE PERSONS ARE SINGLE AND CLAIM ONLY ONE EXEMPTION
- o THAT THEIR EMPLOYERS ARE MAKING THE REQUIRED DEDUCTIONS
- o THAT THESE PERSONS, WHO FILE YEARLY INCOME TAXES, DO NOT ITEMIZE
- o THAT FICA DEDUCTION IS 6.7% OF THEIR SALARY
- o THAT WITHHOLDING (FEDERAL) IS BASED ON 1982 TAX SCHEDULES

BASED ON AN HOURLY WAGE OF \$4.81, 250 WORK DAYS PER YEAR, AND FICA CONTRIBUTIONS AT THE RATE OF 6.7% AN UNDOCUMENTED WORKER PAYS A TOTAL OF \$64.54 FICA PER YEAR. FURTHER, THE SAME UNDOCUMENTED WORKER PAYS, ACCORDING TO 1982 TAX SCHEDULES, A TOTAL OF \$1,130.00 PER YEAR IN WITHHOLDING TAXES. EIGHTY PERCENT OF THE UNDOCUMENTED WORKER POOL CONTRIBUTES BY WORKING A TOTAL OF \$8,517,792,000.00 IN FICA AND WITHHOLDING TAXES.

BASED ON AN HOURLY WAGE OF \$9.00, 250 WORK DAYS PER YEAR, AND FICA CONTRIBUTIONS AT THE RATE OF 6.7% AN UNDOCUMENTED WORKER PAYS A TOTAL OF \$1,206.00 FICA PER YEAR. FURTHER, THE SAME UNDOCUMENTED WORKER PAYS, ACCORDING TO 1982 TAX SCHEDULES, A TOTAL OF \$3,105.00 PER YEAR IN WITHHOLDING TAXES.

TWENTY PERCENT OF THE UNDOCUMENTED WORKER POOL CONTRIBUTES BY WORKING A TOTAL OF \$5,173,000,000.00 IN FICA AND WITHHOLDING TAXES.

THE ABOVE TAX CONTRIBUTIONS AND/OR PAYMENTS DO NOT INCLUDE THE MONEY THAT IS PAID FOR GOODS AND SERVICES IN THE FORMS OF EXCISE TAXES WHICH INCLUDE BUT ARE NOT LIMITED TO TOBACCO, SERVICES, GASOLINE, TRANSPORTATION FARES, ETC. IN ADDITION, STATE AND LOCAL TAXES ARE NOT INCLUDED.



H-2 PROGRAM

DUE TO LEGISLATIVE COMPROMISES DURING THE 97TH CONGRESS, THE H-2 PROGRAM WAS TO BE INCREASED TO 400,000 GUEST WORKERS. HOWEVER, THE PROPOSED H-2 EXPANSION WAS TO BE MADE WITHOUT ADEQUATE SAFEGUARD TO PROTECT WORKERS AND WITHOUT ANY PROVISIONS FOR IMPROVING THE DEPLORABLE WORKING AND HOUSING CONDITIONS AFFECTING MIGRANT AGRICULTURAL WORKERS IN THE UNITED STATES.

OUR APPREHENSION FOR ANY EXPANSION OF H-2 PROGRAMS WITHOUT ADEQUATE SAFEGUARDS ARE BASED ON THE DOCUMENTED HISTORY AFFECTING MIGRANT AGRICULTURAL WORKERS, AND WE STRONGLY FEEL THAT AN EXPANDED H-2 PROGRAM IS INSENSITIVE IN LIGHT OF THE FACT THAT:

- o WITHIN THE LAST TWO YEARS, 23 PERSONS WERE CONVICTED, 22 ACTIVE INVESTIGATION WERE CONDUCTED THROUGH ENFORCEMENT OF ANTI-SLAVERY STATUTES INVOLVING MIGRANT WORKERS;
- o FROM THE LEMON GROWERS IN ARIZONA TO THE ASPARAGUS FIELDS IN NEW JERSEY, MIGRANT WORKERS HAVE A LIFE EXPECTANCY OF ONLY 49 YEARS COMPARED TO 73 YEARS FOR THE AVERAGE U.S. CITIZEN;
- o EIGHTY SIX PERCENT OF MIGRANT CHILDREN WILL NOT FINISH HIGH SCHOOL COMPARED TO THE NATIONAL AVERAGE OF 25%;
- o THE MEDIAN INCOME FOR A MIGRANT FAMILY OF SIX, WITH CHILDREN TOO OFTEN PICKING, IS ONLY \$3,900/YEAR WHICH IS LESS THAN HALF THE GOVERNMENT'S OFFICIAL POVERTY INCOME OF \$9,287/YEAR AND VERY FAR BELOW THE INCOME OF THE AVERAGE AMERICAN FAMILY INCOME OF \$22,383;
- o SEVERAL HUNDRED WORKERS SUFFER PESTICIDE POISONING EVERY YEAR, AND DATA IS AVAILABLE ON THE NUMBER OF INJURIES SUFFERED BY FARMWORKERS EVERY YEAR.

ANY PROPOSED EXPANDED H-2 PROGRAM WITHOUT ADEQUATE SAFEGUARDS BELIES DOCUMENTED EVIDENCE INDICATING THAT:

FARMWORKERS ARE THE VICTIMS OF POOR WAGES, WORKING CONDITIONS AND EDUCATIONAL OPPORTUNITIES. FARMWORKER WAGES ARE EXTREMELY LOW AND OFTEN REPRESENT THE COMBINED EFFORTS OF AN ENTIRE FAMILY, NOT JUST AN INDIVIDUAL WORKER. MANY ARE DEPRIVED OF SOCIAL SECURITY INSURANCE AND DO NOT RECEIVE

THE BENEFITS OF MINIMUM WAGE INCREASES. THE INFANT AND MATERNAL MORTALITY RATE FOR FARMWORKERS IS TWO AND A HALF TIMES THAT OF THE NATIONAL AVERAGE AND THEY HAVE HIGHER MORTALITY RATES FOR INFECTIONS AND OTHER PREVENTABLE DISEASES. MALNUTRITION AND SEVERE VITAMIN DEFICIENCY ALSO CONTRIBUTE TO THE DEPLORABLE HEALTH CONDITIONS OF FARMWORKERS. THE FOOD AND DRUG ADMINISTRATION HAS ESTIMATED THAT SOME 800 TO 1,000 FIELD WORKERS ARE KILLED AND 80,000 TO 90,000 ARE INJURED BY PESTICIDES ANNUALLY.

FARMWORKERS FACE UNIQUE EDUCATIONAL PROBLEMS AND HAVE A SUBSTANTIALLY LOWER EDUCATIONAL LEVEL THAN MOST OTHER OCCUPATIONAL GROUPS IN THE NATION. THE DROPOUT RATE FOR MIGRANT CHILDREN IS APPROXIMATELY 88 PERCENT. SOME OF THE REASONS FOR POOR EDUCATIONAL ACHIEVEMENT ARE GEOGRAPHICAL MOBILITY, THE USE OF CHILD LABOR TO SUPPLEMENT MEAGER FAMILY EARNINGS, THE DISCRIMINATORY PRACTICES AND NEGATIVE ATTITUDES OF COMMUNITY AND SCHOOL PERSONNEL, THE LACK OF CONTINUITY IN EDUCATIONAL PROGRAMS FOR THESE MOBILE CHILDREN, AND THE INABILITY OF TRADITIONAL SCHOOL SYSTEMS TO RECOGNIZE THE NEED FOR INTER-STATE TRANSFER OF ACADEMIC CREDITS EARNED BY MIGRANT STUDENTS.

THAT SUCH ADVERSE CONDITIONS AFFECT A SIGNIFICANT NUMBER OF AMERICAN CITIZENS AND THAT IT IS A NATIONAL PROBLEM WAS ALSO DOCUMENTED IN A PARADE MAGAZINE ARTICLE PUBLISHED ON OCTOBER 10, 1982. THIS ARTICLE FURTHER DOCUMENTS THE FINDINGS OF STUDIES BY INDIVIDUALS, ORGANIZATIONS, AND CHURCH GROUPS CONCERNING THE DEPLORABLE LIVING AND WORKING CONDITIONS OF AGRICULTURAL WORKERS IN THE U.S.

DISGUIISING HIMSELF AS A FARMWORKER, THE REPORTER FOUND "...POOR, POOR LIVING CONDITIONS, BAD FOOD AND PRIMITIVE SANITATION, PARASITES, AND HIGH INCIDENCE OF DIARRHEA AND TB." THE REPORTER ALSO DISCOVERED THAT "...HE NEEDED TO START WORK AT 7:00 A.M., BATTLE MAGGOTS, LABOR IN WATERLOGGED AND SQUELCHING MUD-WATER, CARRY 33 BUCKETS OF PEPPERS WEIGHING 12 LBS., AND WORK TO EXHAUSTION TO EARN MINIMUM WAGE (\$3.35/HR).

THE REPORTER WENT ON TO DOCUMENT THAT OTHER MIGRANT CAMPS REVEALED SQUALOR AND CONDITIONS WORSE THAN THE SLUMS IN SEVERAL U.S. CITIES. HE SAW COUPLES WITH YOUNG CHILDREN LIVING IN WOODEN FIRE TRAPS WITHOUT FIRE EXTINGUISHERS,

HOSES, NOR WATER SOURCES. HE STAYED IN SHEDS USED AS MIGRANT HOUSING, SLEPT ON BUG INFESTED MATTRESSES TOPPING METAL FRAMES ERECTED ON CINDER BLOCKS.

THOUGH THE PERCEPTION THAT MIGRANT FARMWORKERS ARE PREDOMINANTLY HISPANIC IS TRUE, PERSONS OF ALL ETHNIC HERITAGES FILL THE RANKS OF THIS HIGHLY EXPLOITED, YET NONETHELESS, HUMAN, WORKFORCE. RECENT STUDIES INDICATE THAT HISPANIC PERSON COMPRISE APPROXIMATELY 50 TO 55% OF THE FARM LABOR FORCE, BLACKS 30% AND WHITE AND OTHERS 15-20%. WE ASSERT THAT A CASE ON THE HISTORICAL AND CURRENT LIVING AND WORKING CONDITIONS OF THESE WORKERS AND THEIR FAMILIES MUST BE MADE ON THEIR BEHALF DURING COMMITTEE MARK-UP HEARINGS ON THE H-2 PROVISIONS.

THESE DEPLORABLE DOCUMENTED LIVING AND WORKING CONDITIONS DRAMATIZE A NEED FOR IMMEDIATE CORRECTIVE ACTION PRIOR TO SUBJECTING ADDITIONAL WORKERS TO SUCH CONDITIONS.

ALTHOUGH WE ADVOCATE NON-EXPANSION OF ANY H-2 PROGRAM, AT A MINIMUM WE STRONGLY URGE THAT CONGRESS ACTIVELY CORRECT THE ENUMERATED DEPLORABLE CONDITIONS BY:

- A) CALLING UPON DOL TO INVESTIGATE THE CONDITIONS OF LABOR CAMPS IN THE U.S.;
- B) DIRECT AN IMMEDIATE VIGOROUS ENFORCEMENT OF EXISTING LABOR LAWS IN COOPERATION WITH THE U.S. DEPARTMENT OF JUSTICE;
- C) DIRECT DOL TO REPORT ITS FINDINGS TO THE APPROPRIATE CONGRESSIONAL COMMITTEES.
- D) CLARIFY HOW THE ANNUAL APPROPRIATION CONTAINED IN THE H-2 PROVISIONS WILL BE EXPENDED. THE BILL INDICATES THAT THESE MONIES WILL BE SPENT ON (A) RECRUITING DOMESTIC WORKERS AND (B) MONITORING TERMS AND CONDITIONS OF THEIR EMPLOYMENT. WE WOULD LIKE TO HAVE EMPHASIZED THE NEED TO HAVE THESE MONIES EITHER INCREASED OR THE MAJORITY OF THEM TARGETED TO ENFORCING THE LAWS WHICH ARE TO PROTECT THE H-2 WORKERS AND ATTEMPT TO INSURE THAT THEY WILL HAVE ADEQUATE HOUSING, WORKING CONDITIONS AND GENERAL TREATMENT.

PERHAPS MORE UPSETTING THAN ANY OTHER ASPECT OF THIS DEBATE IS THE TENOR IN WHICH DISCUSSION ON THE H-2 PROGRAM AND ITS ASSOCIATION TO THE LEGALIZATION PROGRAM IS MADE. IN THE PAST, SENATORS HAVE STATED THEIR INTEREST AND CONCERN THAT WHATEVER BE DONE ON ANY BILL MUST ALLOW FOR FOREIGN WORKERS TO CONTINUE TO ENTER AND WORK IN THE U.S. WHILE MANY IN BOTH CHAMBERS OF CONGRESS WOULD DISCUSS THE NEED TO KEEP THESE IMMIGRANTS AND FOREIGNERS OUT THEY ARE FAIRLY ADAMANT IN THEIR CONCERN AND COMMENTS TO LET THEM IN IF THEY ARE GOING TO WORK. IT SEEMS INCONSEQUENTIAL THAT IN MOST CASES THESE SAME WORKERS WILL BE WORKING FOR CHEAP WAGES AND SUBSTANDARD WORKING CONDITIONS. IT IS THIS ATTITUDE BY OUR REPRESENTATIVES IN CONGRESS WHICH BEST ILLUSTRATES THEIR INSENSITIVITY TOWARD OUR COMMUNITY. IT IS ALSO DIFFICULT TO UNDERSTAND THAT THROUGHOUT THE DEBATE LAST YEAR ON S. 7777, THE SENATORS' MAJOR INTEREST WAS TO CONTROL AND STOP THE FLOW OF PEOPLE TO THIS COUNTRY, HOWEVER, WHEN THE ISSUE OF CHEAP LABOR WAS RAISED THERE WAS EVERY EFFORT MADE TO INSURE THAT FOREIGN WORKERS WERE ALLOWED TO ENTER BUT NOT REMAIN AS CITIZENS.



## FAMILY REUNIFICATION

WE ARE ALL AWARE OF THE MANY COMPLEX CONTROVERSIES SURROUNDING ALTERATIONS IN THE CATEGORIES OF IMMIGRANTS, COMMONLY KNOWN AS THE PREFERENCE SYSTEM. REGARDLESS OF WHAT OUR VIEWS MAY BE WE ALL ARE IN AGREEMENT THAT FAMILY AND NON-FAMILY CATEGORIES MUST BE CLARIFIED. THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY FOUND THAT THE MIXING OF FAMILY AND NON-FAMILY GROUPS HAD CREATED CONFUSION AND INEQUITY AND THAT IN ORDER TO CORRECT THIS, THESE TWO WOULD HAVE TO HAVE SEPARATE IMMIGRANT CHANNELS" . . . TO ENABLE U.S. IMMIGRATION POLICY TO SERVE AND SUPPORT THE GOALS OF FAMILY REUNIFICATION AND INDEPENDENT IMMIGRATION IN A MORE FLEXIBLE AND EQUITABLE MANNER THAN IS POSSIBLE UNDER THE CURRENT SINGLE-CHANNEL SYSTEM."

A REVIEW OF THE CURRENT PREFERENCE SYSTEM REFLECTS A SIGNIFICANT BACKLOG OF IMMIGRATION APPLICANTS. WE HAVE FOUND THAT IT IS NOT UNCOMMON TO HAVE SOME APPLICANTS WAITING AS LONG AS 12 YEARS. THE NEWS MAGAZINE, U.S. NEWS AND WORLD REPORT FOUND (IN AN APRIL, 1982 EDITION), THAT BACKLOGS IN THREE REGIONAL OFFICES OF THE IMMIGRATION AND NATURALIZATION SERVICE (INS), OFTEN TIMES WERE UP TO SEVEN YEARS WITH MANY APPLICATIONS BEING MISPLACED OR LOST.

THE PREFERENCE SYSTEM ESTABLISHES PRIORITIES ON WHO SHALL BE ALLOWED TO IMMIGRATE. DUE TO THE MAJOR BACKLOGS OCCURRING IN FAMILY MEMBER CATEGORIES (1,2,4,5) WE FIND THAT THE PRACTICAL IMPACTS OF THIS SYSTEM ALLOW THOSE IN A LOWER PREFERENCE CATEGORY (EMPLOYMENT -- 3 AND 6) TO EMIGRATE TO THE U.S. BEFORE FAMILY MEMBERS. IN ADDITION, THIS SITUATION HAS ENCOURAGED ILLEGAL IMMIGRATION FOR FAMILY MEMBERS WHO FIND THE DELAY TOO DIFFICULT TO CONTINUE AND ENTER THE U.S. ILLEGALLY. WE ARE UNAWARE OF THE NUMBERS, HOWEVER, IT HAS BEEN THE EXPERIENCE OF OUR COMMUNITY. UNFORTUNATELY, WE HAVE FOUND THAT THIS PRACTICAL CONSEQUENCE OF ADMINISTRATIVE BREAKDOWN HAS GONE LARGELY IGNORED.

BASED ON THIS SITUATION WE WOULD RECOMMEND THAT REMEDIAL LEGISLATION BE INTRODUCED AND PASSED BY CONGRESS TO CLEAR UP THE EXISTING BACKLOGS. ALSO, WE WOULD URGE THAT IT BE A MATTER OF POLICY TO ESTABLISH A REASONABLE TIME PERIOD FOR WHICH FAMILY MEMBER APPLICANTS COULD EXPECT TO WAIT TO BE

ISSUED A VISA NUMBER.

IN CONSIDERING REFORM OF THE PRESENT PREFERENCE SYSTEM, WE WOULD BE MORE FAVORABLE TO SUPPORTING THE SELECT COMMISSION'S PROPOSED ADMISSIONS SYSTEMS (EXHIBIT 1) WITH SOME CHANGES. THE OBJECTIVES OF ANY NEW SYSTEM SHOULD BE TO GIVE THE REUNIFICATION OF THE IMMEDIATE FAMILY THE HIGHEST PRIORITY. THIS WOULD INCLUDE SPOUSES, UNMARRIED SONS AND DAUGHTERS AS FIRST PREFERENCE NOT SUBJECT TO QUOTA LIMITATION AS WELL AS SPOUSES AND UNMARRIED CHILDREN OF PERMANENT RESIDENTS.

THE FOLLOWING PREFERENCE GROUP SHOULD THEN FOLLOW WITH A NUMERICAL CEILING. THERE WOULD BE NO DEVIATION FROM THESE PREFERENCES WHICH WOULD CONSIST OF (A) BROTHER AND SISTERS OF U.S. CITIZENS AND PERMANENT RESIDENT ALIENS, (B) UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS, (C) MARRIED SONS AND DAUGHTERS (SPOUSES) AND MINOR CHILDREN OF U.S. CITIZENS. WE WOULD EMPHASIZE THAT OUT-OF-WEDLOCK AND PARENTS OF MINOR U.S. CITIZENS ALSO BE INCLUDED IN THE PREFERENCE CATEGORIES FOR TO OMIT THEM WOULD BE AN OBVIOUS CONTRADICTION OF THE FAMILY REUNIFICATION INTENT OF U.S. IMMIGRATION POLICY.

WE VIEW ELIMINATION OF THE PRESENT 5TH PREFERENCE (MARRIED SONS AND DAUGHTERS OF U.S. CITIZENS) NOT A VIABLE CONSIDERATION AT THIS TIME. HOWEVER, WE WOULD SERIOUSLY CONSIDER ITS HAVING A LOWER PREFERENCE AFTER BETTER ASSESSING THE POTENTIAL SUCCESS OF A LEGALIZATION PROGRAM. WITH REGARDS TO THE PROPOSED INDEPENDENT IMMIGRANT CATEGORY, WE ARE CONCERNED WITH THOSE PROBLEMS WHICH WOULD BE CREATED FOR SENDING UNDERDEVELOPED AND/OR DEVELOPING COUNTRIES, BY ENCOURAGING THEIR HIGHLY TRAINED OR PROFESSIONALS TO EMIGRATE TO THE U.S. WE MUST PROCEED CAREFULLY WITH ATTENTION GIVEN TO THIS CONCERN BY SUCH COUNTRIES. WE MUST NOT TAKE AWAY THAT RESOURCE WHICH IS SO COVETED BY THESE GOVERNMENTS ATTEMPTING TO REMEDY THEIR PROBLEMS. WE WOULD FURTHER SUPPORT A REFUGEE CATEGORY OF 50,000 ANNUALLY WITH THE FLEXIBILITY TO ADJUST THE NUMBER UPWARDS WITHOUT HAVING IT COUNT AGAINST NORMAL FLOWS. IN ADDITION, WE WOULD BE INTERESTED IN DISCUSSING THE CONCEPT OF NOT HAVING PER COUNTRY CEILINGS AND IN ITS PLACE A NATIONAL ANNUAL QUOTA FOR LEGAL IMMIGRATION.

CATEGORY I  
INDEPENDENT IMMIGRATION

Immediate Relatives of U.S. Citizens*	Other Close Relatives†	Special Immigrants*	Immigrants with Special Qualifications*	Other Independent Immigrants*
<ul style="list-style-type: none"> <li>• Sponsors</li> <li>• Unmarried sons and daughters</li> <li>• Parents of adult U.S. citizens</li> <li>• Grandparents of adult U.S. citizens</li> </ul>	<ul style="list-style-type: none"> <li>Group 1*               <ul style="list-style-type: none"> <li>• Spouse, minor unmarried children of permanent resident aliens</li> </ul> </li> <li>Group 1†               <ul style="list-style-type: none"> <li>• Adult unmarried sons and daughters of permanent resident aliens</li> <li>• Married sons and daughters of U.S. citizens</li> <li>• Brother and sisters of adult U.S. citizens</li> <li>• Parents (over age 60 whose children all live in the United States) of permanent resident aliens</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Persons who lost U.S. citizenship</li> <li>• Minors of religion</li> <li>• Former employees of U.S. government</li> </ul>	<ul style="list-style-type: none"> <li>• Immigrants of exceptional merit</li> <li>• Investors</li> </ul>	<ul style="list-style-type: none"> <li>• Other qualified immigrants</li> </ul>

\* No per-country ceilings apply.  
† Unused visa numbers may be used in the highest category with unmet demand.  
‡ Per-country ceilings apply.

EXHIBIT 14

ECONOMISTS AND LABOR UNION REPRESENTATIVES WHO HAVE FOLLOWED THIS IMMIGRATION DEBATE HAVE INDICATED THEIR STRONG RESERVATIONS AS TO THE IMPACT IMMIGRANTS AND UNDOCUMENTED WORKERS HAVE ON THE U.S. LABOR MARKET. WE SHARE SOME OF THAT CONCERN BUT WE WOULD CAUTION THAT NO SUBSTANTIVE ACTIONS TAKE PLACE BASED ON EXTREMELY LIMITED DATA ASSESSING THIS IMPACT. WE WOULD RECOMMEND THAT WE BEGIN TO BETTER ANALYZE THE EFFECTS OF LEGAL IMMIGRANTS AND UNDOCUMENTED WORKERS ON THE U.S. ECONOMY, TO ASSESS HOW BEST TO PLAN FOR SUCH EFFECTS AND PREPARE A PLAN TO ADDRESS WHATEVER ISSUES MAY ARISE. HOWEVER, IN THE AREA OF LABOR CERTIFICATION WE WOULD OPPOSE ANY RELAXATION OF THE STANDARDS UTILIZED TO INSURE THAT DOMESTIC LABOR IS NOT ADVERSELY AFFECTED. WE WOULD SUPPORT EFFORTS TO STREAMLINE THE PROCESS SO AS TO REMOVE UNNECESSARY AND CUMBERSOME PROCEDURES, REDUCE FRAUD, AND EXCESSIVE COSTS. A VALID JOB OFFER OR OPPORTUNITIES FOR EMPLOYMENT SHOULD BE RETAINED. A KEY IMPROVEMENT IN THE LABOR CERTIFICATION PROCESS WOULD BE EXPANSION OF THE LABOR MARKET ASSESSMENTS OF SUFFICIENT AND INSUFFICIENT LABOR SUPPLIES. ALSO, THIS EXPANSION MUST BE ACCOMPANIED BY A BETTER ANALYSIS OF WHETHER SHORTAGES ARE CAUSED BY EMPLOYER MANIPULATIONS OR LABOR MARKET DYNAMICS.

IT HAS BEEN SUGGESTED THROUGHOUT THIS DEBATE PROCESS THAT WE GIVE THOUGHT TO UTILIZING A POINT SYSTEM FOR DETERMINING WHO SHOULD BE GIVEN PRIORITY TO ENTER THE COUNTRY UNDER THE INDEPENDENT CATEGORY. PRESENTLY, WE WOULD OPPOSE ANY PROPOSAL OF THIS NATURE FOR WE VIEW IT AS A CONTRADICTION TO THE SPIRIT OF U.S. IMMIGRATION HISTORY WHICH IS BASED ON THE CONCEPT OF OPPORTUNITY AND HUMANENESS. A POINT SYSTEM WOULD DISCRIMINATE AGAINST THOSE AT THE LOWER END OF THE SOCIO-ECONOMIC SCALE, MANY OF WHICH ARE RESPONSIBLE FOR THE GREATNESS OF THIS COUNTRY. WE FEEL A POINT SYSTEM WOULD RESULT IN DISCRIMINATION AGAINST PEOPLE OF COLOR WHILE FAVORING THE ANGO-SAXON OF EUROPE.

IN CLOSING, IT IS IMPERATIVE THAT WE HAVE A FLEXIBLE PREFERENCE SYSTEM WHICH CAN BE ADJUSTED WHEN NECESSARY. SUCH ALTERATIONS WOULD AND SHOULD COME ABOUT FROM IMMIGRANT FLOWS DUE TO WORLD AND HEMISPHERIC CONDITIONS. A MECHANISM INVOLVING CONGRESS AND THE EXECUTIVE BRANCH SHOULD BE ESTABLISHED WHICH WOULD ALLOW ON-GOING ANALYSIS OF POPULATION MOVEMENTS AND PERIODIC ASSESSMENTS OF U.S. POLICY TO ADDRESS SUCH OCCURENCES. WE WOULD EMPHASIZE THAT ANY CHANGES SHOULD BE BASED ON THE MERITS OF THE CIRCUMSTANCES AND NOT ON POLITICAL MOTIVATIONS. THUS, THE DESIGN OF SUCH A MECHANISM IS EXTREMELY IMPORTANT AND ITS INTEGRITY MUST BE PROTECTED.



(WE OFFER THIS TESTIMONY AS AN ADDENDUM TO OUR PREVIOUS SUBMITTAL.)

OUR PREVIOUS TESTIMONY EMPHASIZES OUR SUPPORT FOR WORKING WITH PROPOONENTS OF H.R. 1510 TO IRON-OUT OUR DIFFERENCES ON THIS LEGISLATION. WE VIEW THE EXPERIENCE OF LAST YEAR DURING THE LAME-DUCK SESSION AS EXTREMELY BENEFICIAL FOR THE HOUSE WAS INVOLVED IN A FLOOR DEBATE WHICH REFLECTED THE SINCERE CONCERNS OF MEMBERS OF CONGRESS TO VARIOUS PROVISIONS OF THIS BILL. IT IS NOW IMPERATIVE THAT WE WORK TOGETHER TO ADDRESS THE CONCERNS DEBATED DURING THE SPECIAL SESSION. WE ARE NOT OF THE OPINION THAT IF PERFECT LEGISLATION NOT BE PASSED, THEN NOTHING SHOULD BE APPROVED, RATHER WE FIRMLY BELIEVE THAT OUR INTENT FOR PERFECTION, OUR INTEREST FOR SOUND, EFFECTIVE PUBLIC POLICY, NOT BE SACRIFICED FOR LEGISLATION WHICH WILL CREATE MORE PROBLEMS THAN PROVIDE REMEDIES. WE FIRMLY BELIEVE THAT THIS LEGISLATION CAN BE IMPROVED TO ADDRESS OUR CONCERNS AND THE PROBLEMS OF POPULATION MOVEMENTS.

WE STAND COMMITTED TO WORKING OUT OUR DIFFERENCES WITH PROPOONENTS OF H.R. 1510 AND WILL DO AS WE DID LAST YEAR IN OFFERING ALTERNATIVE AND PERFECTING LANGUAGE TO THIS LEGISLATION. DESPITE THE RELUCTANCE AND OPPOSITION TO OUR CONCERNS LAST YEAR, WE CONTINUED TO WORK WITHIN THE LEGISLATIVE PROCESS AND WILL DO SO AGAIN THIS YEAR. HOWEVER, WE MUST ADD THAT THIS EFFORT IS MULTI-FACETED AND REQUIRES OPENNESS AND SUPPORT. WE HOPE THAT THIS YEAR WE WILL BE ABLE TO HAVE PROPOONENTS OF H.R. 1510 TO MEET US HALF-WAY IN DISCUSSING OUR CONCERNS. THE ALTERNATIVES TO THIS PROCESS ARE VERY FEW SHOULD THE SPIRIT OF DIALOGUE FAIL TO PROVIDE RESULTS.

#### LOCAL LAW ENFORCEMENT

PRESENTLY, WHAT CONCERNS US IS THE ENVIRONMENT IN WHICH WE ARE ENTERING THIS PRESENT LEGISLATIVE DEBATE. A MAJOR AREA OF CONCERN DEALS WITH THE ROLE OF LOCAL LAW ENFORCEMENT IN IMMIGRATION MATTERS. A DOMESTIC COUNSEL (ON ILLEGAL ALIENS) STUDY IN 1976 FOUND THAT THE INVOLVEMENT OF LOCAL ENFORCEMENT AUTHORITIES IN IMMIGRATION CREATED PROBLEMS OTHER THAN THOSE NORMALLY ARISING FROM INS ACTIVITIES. IT ATTRIBUTED THESE DIFFICULTIES

TO "AGENCIES...OFTEN UNAWARE OF USUAL POLICIES IN THE ENFORCEMENT OF IMMIGRATION LAW OR HOSTILE TO THE FEELINGS OF ETHNIC COMMUNITIES.

THE PROBLEMS CREATED BY LOCAL POLICE ATTEMPTING TO ENFORCE IMMIGRATION LAWS ARE EXEMPLIFIED BY THE FOLLOWING TESTIMONY FROM A TRIAL ON TRAFFIC RELATED CHARGES. IN THAT CASE, AN AMERICAN CITIZEN OF MEXICAN ANCESTRY HAD ALSO BEEN HELD IN JAIL FOR THREE DAYS ON A "HOLD FOR INVESTIGATION OF ILLEGAL ENTRY." DURING THE TRIAL, THE ARRESTING OFFICER GAVE THE FOLLOWING TESTIMONY DURING CROSS-EXAMINATION:

Q: WHAT WAS THAT CHARGE?

A: INVESTIGATIVE CHARGE OF ILLEGAL ENTRY

Q: THAT CHARGE, YOU DIDN'T WRITE HIM A CITATION ON THAT CHARGE, DID YOU?

A: NO SIR. THAT'S INVESTIGATIVE CHARGE.

Q: AND YOU KNEW THAT HE WAS WANTED BY IMMIGRATION?

A: NO SIR.

Q: BUT YOU JUST FILED THAT CHARGE?

A: INVESTIGATIVE CHARGE.

Q: INVESTIGATIVE CHARGE. DID YOU EVER TAKE THAT CHARGE OFF?

A: NO SIR.

Q: NOW IS THIS THE NORMAL ROUTINE THAT YOU FOLLOW WHEN YOU ARREST MEXICANS IN GRAND PRAIRIE?

A: ARE YOU SPEAKING OF AN ILLEGAL ALIEN OR A MEXICAN?

Q: WELL, HOW CAN YOU TELL THE DIFFERENCE? DO YOU KNOW WHAT THE DIFFERENCE IS?

A: NO SIR. WHEN I CAN'T DETERMINE, THAT'S WHY I PUT THEM IN JAIL FOR INVESTIGATIVE CHARGES.

Q: SO YOU MIGHT BE PUTTING AMERICAN CITIZENS IN JAIL?

A: IT'S POSSIBLE.

Q: THAT'S ALL RIGHT THEN?

A: YES SIR.

Q: THEY HAVE TO PROVE THAT THEY ARE AMERICAN CITIZENS?

A: YES SIR.

BOTH THE ATTORNEY GENERAL AND THE INS HAD ATTEMPTED TO CURTAIL LOCAL POLICE PRACTICES OF ENFORCING THE IMMIGRATION LAWS. IN A JUNE 1978 PRESS RELEASE, THEN ATTORNEY GENERAL GRIFFIN BELL STATED THAT "THE RESPONSIBILITY FOR ENFORCEMENT OF THE IMMIGRATION LAW RESTS WITH THE IMMIGRATION AND NATURALIZATION SERVICE (INS), AND NOT WITH STATE AND LOCAL POLICE." MORE THAN A YEAR PRIOR TO THAT PRESS RELEASE, THE INS ISSUED A SIMILAR INSTRUCTION TO ITS REGIONAL COMMISSIONERS.

ALTHOUGH THE IMMIGRATION AND NATIONALITY ACT EXPRESSLY AUTHORIZES LOCAL POLICE INVOLVEMENT IN THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS IN ONLY ONE INSTANCE ( 8 U.S.C. § 1324 (C) 1976), LOCAL POLICE DEPARTMENTS HAVE NOT CONFINED THEIR ENFORCEMENT OF THOSE LAWS TO THAT PORTION OF THE STATUTE. THIS EXPANDED LOCAL POLICE INVOLVEMENT HAS CONTINUED, NOTWITHSTANDING ADMONITIONS FROM THE DEPARTMENT OF JUSTICE AND THE IMMIGRATION AND NATIONALITY SERVICE THAT ENFORCEMENT OF IMMIGRATION LAWS IS THE RESPONSIBILITY OF THE INS.

OFFICERS OF THE EL PASO POLICE DEPARTMENT ARE KNOWN TO APPREHEND ALIENS AND RETURN THEM TO THE MEXICAN SIDE OF THE FRONTIER.<sup>11</sup> IT HAS ALSO BEEN CHARGED THAT LOCAL POLICE IN SAN DIEGO CONTINUE TO ATTEMPT ENFORCEMENT OF THE IMMIGRATION LAWS, AND EVEN A FORMER INS DISTRICT DIRECTOR HAS ACKNOWLEDGED THAT LOCAL POLICE ARE CONTINUING TO PLACE "IMMIGRATION HOLDS" ON PERSONS SUSPECTED OF IMMIGRATION VIOLATIONS.

DISPITE EXISTING PROBLEMS BY LOCAL LAW ENFORCEMENT TO COMPLY WITH ATTORNEY GENERAL BILL MEMORANDUM, THE DEPARTMENT OF JUSTICE HAS ALTERED THIS POLICY (EXHIBIT A - ATTACHED) BY ENCOURAGING JOING OPERATIONS BETWEEN IMMIGRATION AND NATURALIZATION SERVICE (INS) PERSONNEL AND LOCAL POLICE. CLEARLY, THIS WILL RESULT IN ADDITIONAL FRICTION BETWEEN THE HISPANIC COMMUNITY AND LOCAL POLICE FOR AMERICAN CITIZENS AND LEGAL RESIDENTS OF HISPANIC DESCENT WILL BE HARASSED AS TO THEIR LEGAL STATUS. IN SOME SITUATIONS, LOCAL POLICE MAY CONDUCT RESIDENTIAL DRAGNETS IN HISPANIC COMMUNITIES RESULTING IN MAJOR CONFRONTRATIONS.

**Mr. MAZZOLI.** Mr. Kee, welcome.

**Mr. KEE.** Mr. Chairman, members of the House of Representatives Subcommittee on Immigration and Refugee Policy, I want to thank you for the invitation to testify before your subcommittee on H.R. 1510 to be introduced to the House this session of Congress.

It is gratifying that the subcommittee is sensitive to the views of Asian Americans, and we welcome this opportunity to express our concerns.

During the last session of Congress, you no doubt have learned that the Asian American community was deeply concerned about the proposed immigration laws as they affect both illegal and legal immigration.

We support the legalization provisions of the bill, although we would prefer a single tier program based on as current a date as possible. However, there is a diversity of opinion in our community as to whether the employers' sanctions provision proposed in your bill is a necessary tradeoff for the legalization program. As a minority ethnic group that has been the target of earlier discriminatory immigration laws, we feel that any employers' sanctions system which is passed must be:

First, inherently and absolutely free from discrimination; second, workable; and third, cost effective.

We feel that the provisions under H.R. 1510 do not meet all of these criteria, and it would take the collective wisdom of both the House and Senate to structure a bill to meet these criteria or to propose viable alternatives.

As I had previously testified last year, I believe your committee has overreacted in imposing harsh restrictions against adjustment of status, particularly in the case of students. We believe that more consideration in adjustment of status cases should be given to family reunification as well as to the national interest in developing a pool of highly trained engineers and scientists.

The Judiciary Committee of the House of Representatives is to be complimented for proposing a preference system which promotes family reunification and has proven to be workable. The Senate bill proposes the elimination of the fifth preference category.

The reasons that have been given by the Senate Subcommittee are that the fifth preference category has a potential "multiplier effect," and that there are long waiting periods for quotas under



the fifth preference category. Both of these reasons have no basis in fact or rationale.

The present preference system has been in effect since 1952 with some modifications made in 1965. In February, 1983, the VISA bulletin issued by the State Department shows that the waiting time for most preference categories for virtually every country has been reduced to a reasonable period.

The family categories, with a few exceptions, indicate waiting periods which range from 0 to 19 months, counting from the time that petitions are submitted. The waiting list or backlog is working itself out instead of "multiplying."

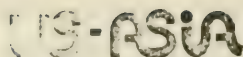
The backlog, which is longer than normal for some Asian countries, is not the result of any "multiplier effect" of the fifth preference. It is my contention that it is a temporary condition caused by the fact that Asians were allowed only token quotas until 1965. A new immigrant has to be naturalized and have sufficient means to support his sibling's family before he can petition for their entry into this country.

In practical terms, this means about 10 to 15 years from the time of his own entry. It also means that he will use these petitions for only the family of one sibling. Also, studies have shown that only one-half of the fifth preference immigrants became naturalized. Therefore, the effect of the "fifth preference multiplier effect" is greatly exaggerated. The next few years will see a decline in the number of fifth preference applicants. We are already witnessing this in the recent improvement in quota backlogs.

The present preference system is not perfect by any means. There are some countries with extended waiting periods for family categories. In the case of Hong Kong, the reason for the backlog is the low annual limit of 600 under the sub-quota system. There has been an amendment submitted which proposes a larger limit of 3,000 and we strongly support such a measure. We also support one-time special legislation which would cut down waiting time for families in all other countries.

In this time of economic hardship for many Americans, we feel that Congress should take the tried and tested approach, to build and improve upon the House sponsored preference system. Investors and other independent categories may be added or grafted to the present system.

During the last session of Congress, over 100,000 signatures and 2,000 letters from Asian Americans were sent to the Senate and the House advocating the continuance of fifth preference. On this issue, we stand together with millions of Americans including Italian Americans, Hispanic Americans, Polish Americans, Jewish Americans, Greek Americans, and many many other ethnic groups.



## US-Asia Institute

STATEMENT TO THE UNITED STATES HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES & INTERNATIONAL LAW

by  
NORMAN LAU KEE, CHAIRMAN  
IMMIGRATION & REFUGEE POLICY TASK FORCE  
US-ASIA INSTITUTE

MARCH 14, 1983

"MR. CHAIRMAN, MEMBERS OF THE HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW:

I WANT TO THANK YOU FOR THE INVITATION TO TESTIFY BEFORE THE SUBCOMMITTEE ON THE IMMIGRATION REFORM BILL, HR1510, WHICH YOU PLAN TO INTRODUCE TO THE HOUSE THIS SESSION OF CONGRESS. IT IS GRATIFYING THAT THE SUBCOMMITTEE IS SENSITIVE TO THE VIEWS OF THE ASIAN AMERICANS AND WE WELCOME THIS OPPORTUNITY TO EXPRESS OUR CONCERNS.

DURING THE LAST SESSION OF CONGRESS, YOU NO DOUBT HAVE LEARNED THAT THE ASIAN AMERICAN COMMUNITY WAS DEEPLY CONCERNED ABOUT THE PROPOSED IMMIGRATION LAWS AS THEY AFFECT BOTH ILLEGAL AND LEGAL IMMIGRATION.

### LEGALIZATION AND EMPLOYERS' SANCTIONS

WE SUPPORT THE LEGALIZATION PROVISIONS OF THE BILL. HOWEVER, THERE IS A DIVERSITY OF OPINION IN OUR COMMUNITY AS TO WHETHER THE EMPLOYERS' SANCTIONS PROVISION PROPOSED IN YOUR BILL IS A NECESSARY "TRADE-OFF" FOR THE LEGALIZATION PROGRAM. AS A MINORITY ETHNIC GROUP THAT HAS BEEN THE TARGET OF EARLIER DISCRIMINATORY IMMIGRATION LAWS, WE FEEL THAT ANY EMPLOYERS' SANCTIONS SYSTEM WHICH IS PASSED MUST BE:

- A. INHERENTLY AND ABSOLUTELY FREE FROM DISCRIMINATION;
- B. WORKABLE; AND

## C. COST EFFECTIVE,

WE FEEL THAT THE PROVISIONS UNDER HR1510 DO NOT MEET ALL OF THESE CRITERIA, AND IT WOULD TAKE THE COLLECTIVE WISDOM OF BOTH THE HOUSE AND SENATE TO STRUCTURE A BILL TO MEET THESE CRITERIA OR TO PROPOSE VIABLE ALTERNATIVES.

ADJUSTMENT OF STATUS

AS I HAD PREVIOUSLY TESTIFIED LAST YEAR, I BELIEVE YOUR COMMITTEE HAS OVERREACTED IN IMPOSING HARSH RESTRICTIONS AGAINST ADJUSTMENT OF STATUS, PARTICULARLY IN THE CASE OF STUDENTS. WE BELIEVE THAT MORE CONSIDERATION IN ADJUSTMENT OF STATUS CASES SHOULD BE GIVEN TO FAMILY REUNIFICATION AS WELL AS TO THE NATIONAL INTEREST IN DEVELOPING A POOL OF HIGHLY TRAINED ENGINEERS AND SCIENTISTS.

PREFERENCE SYSTEM

THE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES IS TO BE COMPLIMENTED FOR PROPOSING A PREFERENCE SYSTEM WHICH PROMOTES FAMILY REUNIFICATION AND HAS PROVEN TO BE WORKABLE. THE SENATE BILL PROPOSES THE ELIMINATION OF THE FIFTH PREFERENCE, OR BROTHER-SISTER PREFERENCE, CATEGORY. THE REASONS THAT HAVE BEEN GIVEN BY THE SENATE SUBCOMMITTEE ARE THAT THE FIFTH PREFERENCE CATEGORY HAS A POTENTIAL "MULTIPLIER EFFECT", AND THAT THERE ARE LONG WAITING PERIODS FOR QUOTAS UNDER THE FIFTH PREFERENCE CATEGORY. BOTH OF THESE REASONS HAVE NO BASIS IN FACT OR RATIONALE. THE PRESENT PREFERENCE SYSTEM HAS BEEN IN EFFECT SINCE 1952 WITH SOME MODIFICATIONS MADE IN 1965. IN FEBRUARY 1983, THE VISA BULLETIN ISSUED BY THE STATE DEPARTMENT SHOWS THAT THE WAITING TIME FOR MOST PREFERENCE CATEGORIES FOR VIRTUALLY EVERY COUNTRY HAS BEEN REDUCED TO A REASONABLE PERIOD. THE FAMILY CATEGORIES, WITH A FEW EXCEPTIONS, INDICATE

WAITING PERIODS WHICH RANGE FROM 0 TO 19 MONTHS, COUNTING FROM THE TIME THAT PETITIONS ARE SUBMITTED. THE WAITING LIST IS WORKING ITSELF OUT INSTEAD OF "MULTIPLYING,"

THE BACKLOG, WHICH IS LONGER THAN NORMAL FOR SOME ASIAN COUNTRIES, IS NOT THE RESULT OF ANY "MULTIPLIER EFFECT" OF THE FIFTH PREFERENCE. IT IS MY CONTENTION THAT IT IS A TEMPORARY CONDITION CAUSED BY THE FACT THAT ASIANS WERE ALLOWED ONLY TOKEN QUOTAS UNTIL 1965. A NEW IMMIGRANT HAS TO BE NATURALIZED AND HAVE SUFFICIENT MEANS TO SUPPORT HIS SIBLING'S FAMILY BEFORE HE CAN PETITION FOR THEIR ENTRY INTO THIS COUNTRY. IN PRACTICAL TERMS, THIS MEANS ABOUT 10-15 YEARS FROM THE TIME OF HIS OWN ENTRY. IT ALSO MEANS THAT HE WILL USE THESE PETITIONS FOR ONLY THE FAMILY OF ONE SIBLING. ALSO, STUDIES HAVE SHOWN THAT ONLY ONE HALF OF THE FIFTH PREFERENCE IMMIGRANTS BECOME NATURALIZED. THEREFORE, THE "FIFTH PREFERENCE MULTIPLIER EFFECT" IS A MYTH. THE NEXT FEW YEARS WILL SEE A DECLINE IN THE NUMBER OF FIFTH PREFERENCE APPLICANTS. WE ARE ALREADY WITNESSING THIS IN THE RECENT IMPROVEMENT IN QUOTA BACKLOGS.

THE PRESENT PREFERENCE SYSTEM IS NOT PERFECT BY ANY MEANS. THERE ARE SOME COUNTRIES WITH EXTENDED WAITING PERIODS FOR FAMILY CATEGORIES. IN THE CASE OF HONG KONG, THE REASON FOR THE BACKLOG IS THE LOW ANNUAL LIMIT OF 600 UNDER THE SUB-QUOTA SYSTEM. THERE HAS BEEN AN AMENDMENT SUBMITTED WHICH PROPOSES A LARGER LIMIT OF 3000 AND WE STRONGLY SUPPORT SUCH A MEASURE. WE ALSO SUPPORT ONE-TIME SPECIAL LEGISLATION WHICH WOULD CUT DOWN WAITING TIME FOR FAMILIES IN ALL OTHER COUNTRIES.

IN THIS TIME OF ECONOMIC HARDSHIP FOR MANY AMERICANS, WE FEEL THAT CONGRESS SHOULD TAKE THE TRIED AND TESTED APPROACH--TO BUILD AND IMPROVE UPON THE HOUSE SPONSORED PREFERENCE SYSTEM. INVESTORS AND OTHER INDEPENDENT CATEGORIES



MAY BE ADDED OR GRAFTED TO THE PRESENT SYSTEM.

DURING THE LAST SESSION OF CONGRESS, OVER 100,000 SIGNATURES AND 2000 LETTERS FROM ASIAN AMERICANS WERE SENT TO THE SENATE AND THE HOUSE ADVOCATING THE CONTINUANCE OF FIFTH PREFERENCE. ON THIS ISSUE, WE STAND TOGETHER WITH MILLIONS OF AMERICANS INCLUDING ITALIAN AMERICANS, HISPANIC AMERICANS, POLISH AMERICANS, ISRAELI AMERICANS, GREEK AMERICANS, AND MANY MANY OTHER ETHNIC GROUPS. SINCE 1921, PREFERENCE FOR BROTHERS AND SISTERS HAS BEEN A PART OF OUR IMMIGRATION LAW AND HERITAGE. WE HOPE YOU WILL VOTE TO CONTINUE THIS PREFERENCE WHICH HAS HELPED TO MAKE OUR NATION GREAT.

GENTLEMEN, THANK YOU VERY MUCH."

Since 1921, preference for brothers and sisters has been a part of our immigration law and heritage. We hope we will vote to continue this preference which has helped to make our Nation great.

Gentlemen, thank you very much.

Mr. MAZZOLI. Thank you very much, Mr. Kee. We appreciate it.

Our last witness, after which we will have questions, is Mr. Benjamin Gim, chairman, Committee on Immigration Refugees of the Organization of Chinese Americans, Inc.

Mr. GIM. The Organization of Chinese Americans, which represents thousands of Chinese Americans in 24 chapters throughout the country, appreciates this opportunity to express our views on the Immigration Reform and Control Act.

First, we wish to applaud the committee for preserving intact the family preference system. In enacting the Immigration Reform Act of 1965, it was the expression of Congress that family reunification was entitled to the foremost consideration, so we especially commend the committee for reaffirmation of that principle.

We also wish to commend the committee for its very conscientious efforts in seeking to reform our immigration policy and to control illegal immigration. However, we must respectfully express our disagreement on some of the methods devised to achieve these purposes.

First of all, in the employer sanctions, in our opinion, there is no real hard evidence that undocumented workers displace American workers. As a matter of fact, the evidence, what little evidence there is, is to the contrary. Last year the Immigration Service embarked on this widely publicized Operation Jobs in which over 5,000 undocumented aliens were arrested at 540 jobs sites.

Extensive efforts were then made to recruit American workers from the unemployment ranks to fill those jobs. Yet the net effect, according to a survey by the Wall Street Journal after a few months, was that those jobs were virtually not filled, that the few

people who filled those jobs left the jobs shortly afterwards, so that employers were again forced to recruit undocumented workers.

The reasons for this failure to fill those vacated jobs were varied. Even though those jobs paid above the minimum wage, many American workers thought these were deadend jobs. Others thought that these jobs did not pay, even though they paid above the minimum wage, did not pay sufficiently for the labor required.

Others thought these jobs were demeaning, but whatever the reasons, the net effect of Operation Jobs was a failure to produce employment for American workers.

Second, of course, we have heard reference to the General Accounting Office study which shows that unless there is a massive appropriations for enforcement of these employer sanctions, the effort is doomed to failure. I think the General Accounting Office study goes even further, that even with a massive infusion of funds to implement this program, perhaps the effectiveness based on the experience of European countries, some 20 European countries that were studies, was somewhat problematical.

Now, while the employer sanctions in our opinion would not deter or discourage illegal immigration, we feel that the employer sanctions program would have the net result of permitting discrimination. People of foreign appearance, foreign accents, foreign names, would—out of an abundance of caution by every neutral employer, employers who have no feelings about discrimination, employers with an abundance of caution—would not hire American citizens or legal residents who appear to be foreign looking.

Mr. MAZZOZZI. Mr. Gim, I think we have about a minute and a half.

Mr. GIM. On legalization, we commend the efforts of the committee to legalize the perhaps millions of workers here who through perhaps the laxity of the Immigration Service in enforcing the immigration laws have been here for periods of time. They have proved to be productive members of our society.

However, there is an inherent illogic in this system in that non-immigrants who are illegally here, who have been very punctilious in maintaining the laws and maintaining their status, are not covered by legalization. So we would urge that the nonimmigrant also be covered because today otherwise would create the appearance of rewarding illegality.

Thank you, Mr. Chairman.

[The complete statement follows:]



# ORGANIZATION of CHINESE AMERICANS, inc.

EMBRACING THE HOPES AND ASPIRATIONS OF CHINESE IN THE UNITED STATES  
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Organization of Chinese  
American Women (OCAW)

## STATEMENT OF THE ORGANIZATION OF CHINESE AMERICANS BEFORE THE HOUSE SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY ON THE IMMIGRATION REFORM AND CONTROL ACT OF 1983 (H.R. 1510)

Benjamin Gim, Chairman  
Committee on Immigration  
and Refugees

Laura Chin  
Executive Director

March 14, 1983

美華協會

The Organization of Chinese Americans (OCA) is a national, non-profit organization whose membership comprises thousands of Chinese Americans located in 26 chapters throughout the United States. We support the good intentions of the Congress in its efforts toward reform of immigration law and policy and stronger controls over illegal immigration. However, the Immigration Reform and Control Act of 1983 (HR 1510) introduced on February 17, 1983, is seriously flawed in important respects and does not achieve these purposes.

#### I. Employer Sanctions

The bill provides both civil and criminal penalties for employers who employ undocumented aliens. We believe such sanctions imposed upon employers do not achieve their twin objectives of discouraging illegal immigration and preventing job displacement of American workers for the following reasons:

1. As the Select Commission on Immigration and Refugee Policy found after 3 years of intensive study, there is no hard evidence that employment of undocumented aliens displaces in any significant degree American workers. Indeed, what evidence there is seems to point to the contrary. The latest example of this is demonstrated in the widely publicized enforcement program announced by the Immigration Service which was heralded as "Operation Jobs". In April of 1982, the Immigration Service arrested over 5,000 undocumented aliens at 560 different work sites. In planning the arrests, the INS operated on the assumption that U.S. workers would not take the lowest level jobs such as busboys and field hands, did not arrest undocumented aliens in these jobs, and instead, concentrated on those aliens working at jobs averaging \$4.80 per hour, well above the legal minimum wage. After the aliens were arrested and taken off the jobs, extensive efforts were made to recruit replacements from unemployed American workers. The follow-up on this program a few months later, revealed, however, that nearly all these jobs were unfilled by American workers, and employers had to again resort to employing undocumented aliens. In a carefully documented article of December 8, 1982 in the



Wall Street Journal, its staff reporter, Merle Wolin, stated that newspaper surveys conducted a few months after "Operation Jobs" in cities such as New York, Los Angeles, Houston and Detroit, revealed that "nearly all the U.S. workers" who took the vacated jobs, left the jobs within days. The reason U.S. workers would not keep these jobs varied. Some thought that these jobs, even though the pay was above the legal minimum, was still insufficient remuneration for the type of work required. Others did not like the jobs because they were "dead end" with no future. Still others did not keep the jobs because the duties were tedious and boring. Some left their jobs because the work was physically taxing and dangerous, while others quit their jobs because they thought the employment was demeaning, fit only for undocumented aliens. The net effect of this expensive, highly publicized immigration law enforcement program, proclaimed as a meaningful step in the direction of controlling employment of undocumented workers and restoring these jobs to the rightful American workers, was a failure and produced no significant employment of U.S. workers.

2. A recent detailed study by the General Accounting Office released in late 1982, indicated that the proposed employer sanctions as contained in the 1982 Simpson-Mazzoli Bill, would not be an effective deterrent to illegal immigration unless massive amounts of money were allocated for enforcement with tremendous increase in personnel, neither of which is provided in the present legislation. Even then, the experience in 20 different countries which have employer sanctions, indicated that the effectiveness of such a deterrent would be problematical.
3. On the other hand, the negative by-products of an ill-conceived employer sanctions statute, while not being effective to deter the employment of undocumented workers, would result in impeding our long cherished goal of fair employment practices and the elimination of racial and ethnic discrimination. Our citizens and lawful permanent residents who

are foreign born, have foreign appearances and foreign accents, would be the first to suffer discrimination in applying for employment. Prejudiced employers would find in employer sanctions a convenient excuse to cloak their racially discriminatory practices. Even those employers who have neutral feelings would eschew hiring American workers from racial and ethnic minorities out of an abundance of caution to avoid even the possibility of penalties and liabilities on the chance that some person hired was an undocumented worker. Finally, those cynical, hard-core employers who intentionally risk law violations by hiring undocumented workers would be encouraged and even abetted in their nefarious practices because they would be able to say to the undocumented worker that all legal avenues of employment are now closed to them except those who are willing to risk the violations and that for that risk, they are entitled to some offset in the form of even more reduced wages.

## II. Legalization

Due in no small measure to the regrettable inability of the Immigration and Naturalization Service for the past several years to control illegal immigration, we may have as many as 6 million undocumented aliens. The overwhelming majority of these person are productive people, gainfully employed in performing useful jobs. Many are parents of American citizens and have families. Others are equally deeply rooted in the fabric of American society. It is neither practical nor humane to attempt to deport them. We therefore applaud the efforts of the Congress in devising some mechanism to legalize their status. However, the present bill does not go far enough and otherwise does not include those aliens legally here for the same period of time as those whose presence has been illegal. Such a dichotomy is at once illogical, irrational, and capricious. We believe a few examples would demonstrate this. Compare the case of, say, a foreign student who came to the United States prior to January 1, 1977, earned a Ph.D degree from Harvard University, and is presently doing invaluable cancer research on an H-1 status. He has at all times been circumspect in maintaining his legal status, never engaged in unauthorized employment, conducted himself at all times as an extremely useful and productive member of our society, and is doing work that is invaluable to the welfare of our country. He is not eligible because he has not been in illegal status,

whereas, a person, for example, who entered the United States as a student in September, 1976, dropped out of school, two months later, in violation of his status, accepted unauthorized employment in further violation of his status, all before January 1, 1977, would be rewarded by being given permanent residence. Or, to take another example. Compare the case of a treaty investor alien, who entered this country in 1976, established a business employing 30 American workers, thus contributing to the economy and welfare of this country, and who has consistently expanded his business, thereby increasing employment and adding to its economy and growth. Since he has at all times been punctilious in maintaining his legal status, he would not be eligible because he is a legal nonimmigrant. On the other hand, the person who smuggles himself across the border in 1976, never filed an alien address card, has always evaded the Immigration and Naturalization Service, and is illegally employed, is rewarded by being granted permanent residence. We could cite such examples ad infinitum to illustrate that such a differentiation is irrational, capricious and undermines respect for the law because it simply stands logic on its head and offends one's commonsense notion of fairness and justice. While we firmly advocate that our borders be controlled and that any further illegal immigration be halted, those already here, whether in legal nonimmigrant status or not, who arrived on or before January 1, 1982, if otherwise admissible, be given a chance to apply for permanent residence. Moreover, we do not believe that any two-tier system separating those aliens who arrived before January 1, 1977 from those who arrived after that date but before January 1, 1980, into two classes - the former qualifying for permanent residence and the latter only temporary residence, is either efficient or fair. There is a basic injustice in denying federally funded assistance, when needed, to the temporary resident aliens who pay state and federal taxes and otherwise share the burdens but is denied its benefits. Moreover, to have a large class of temporary aliens who are first processed for temporary status, only to be again reprocessed 3 years later for permanent residence is needlessly wasteful in terms of government funding of such work duplication.

### III. Colonial Subquotas

At the present time, persons born in colonial areas, though citizens of their mother country, are separately charged to quotas of 600 visas per colonial area, even though the quota chargeability of the mother country is open. Thus, a Hong Kong born permanent resident alien must wait over 5 years to have his Hong Kong born wife and Hong Kong born child emigrate to this country, whereas, if they were charged

to the mother country, the wait would be less than 3 months. There is no logical or functional reason for setting up colonial subquotas. Colonial subquotas were originally devised as a covert scheme to prevent the immigration of black citizens of Great Britain born in the then British colonies such as Kenya, Jamaica, Trinidad and Bermuda. The framers of the McCarran Act were fearful that these black aliens would emigrate in too great numbers under the unused British quota. Thus, in order to prevent their immigration, token colonial subquotas were established to limit their immigration. Ironically, these ill-conceived efforts failed to achieve their purpose, because as colonies, such as Jamaica and Trinidad, achieved independence, they were freed from the restrictive subquota formula, whereas colonies such as Hong Kong were strangled by this vestige of race discrimination. The Immigration Reform Act of 1965 which eliminated in large part, racial considerations from our immigration policy, failed to cure this last vestige of racial discrimination, probably, due to oversight. We believe the time has come to erase this unfortunate legacy of racism from our laws. We advocate that the colonial subquota formula be abolished and that a person born in a colonial area should be charged to the quota of the mother country.

Mr. MAZZOLI. Thank you very much, Mr. Gim.

The fact is we appreciate you and all of your colleagues' willingness to try to condense your statements down.

Mr. Huerta had mentioned earlier that he appreciates the high level of debate that we have conducted on this committee and on the floor. I believe it has been very high level, very informative, very much absent the kind of scapegoating and cheap-shotting which has characterized this work in the past, and one of the reasons that I am for passing this bill now, even though you are not, is the fact that I fear that if a bill like ours doesn't pass, which has symmetry and balance and humanity and compassion built into it, that we are going to invite the kind of harsh dialog you say you are against.

Do you think I am dead wrong or it is so bad that the present conditions are worth continuing for another few years?

Mr. HUERTA. From the standpoint of the Mexican American community, we think that the bill is so bad that it isn't worth our supporting it. History has shown—

Mr. MAZZOLI. What is to keep this thing from becoming pretty nasty and difficult if the bill doesn't pass?

Mr. HUERTA. During a period of high unemployment there has been that level of anger and resentment and fear in the United States and we are going through that period right now. I think your leadership is responsible for that not being addressed in those terms on the floor of the House.

Historically, there has been a more generous view of immigrants coming to this country when we are in periods of economic growth. Hopefully, President Reagan's program is beginning to take hold and the economy will begin to grow and there will be higher levels of employment and we will see less of the negative aspects of the bill.



Mr. MAZZOLI. Your answer is do nothing now at all. I don't see anything in your statement about enforcement of the law.

Mr. HUERTA. There is a statement and a position that I submitted to you on enforcement of immigration law. We testified for enforcement as well as services in the past.

Mr. MAZZOLI. Do you have it in the statement before us today?

Mr. HUERTA. I do, appendix A or B in the statement.

Mr. MAZZOLI. It wasn't in the main statement, though, was it?

Mr. HUERTA. No; the main statement addressed legalization.

Mr. MAZZOLI. That was because you wanted to devote yourself to the one topic?

Mr. HUERTA. I wanted to be as helpful as possible to this committee.

Mr. MAZZOLI. Mr. Kee, let me ask you a question about an interesting topic.

On page 3 toward the end of your middle paragraph you say that studies have shown that only one-half of the fifth preference immigrants have become naturalized. Do you have any data on what the percentage of naturalization for Asian immigrants totally, whether they come in under the fifth preference or any other preference? Do you have any judgment based on working in the field for all the years you have?

Mr. KEE. Yes. A gentleman named Mark Rosenblatt, University of Minnesota, presented to the Senate subcommittee a treatise on naturalization and immigration of fiscal year 1971 immigrant cohorts 8 years after entry.

Of those known to be here, all immigrants 45.6, Eastern Hemisphere, 59.8 total, and as between fifth preference and nonfifth preference, fifth preference is 46.2 which is less than 50 percent, and nonfifth preference 62.3. A total for the Western Hemisphere was 22.1.

Mr. MAZZOLI. Only 22 percent of all the Western Hemisphere people who are here as permanent residents actually become naturalized citizens?

Mr. KEE. I am amazed at the statistics also.

Mr. MAZZOLI. I understand that it can go down as low as 5 percent in some categories, 5 percent of the people who are qualified to become citizens here as permanent residents don't become citizens. What would be some of the reasons why people would be in the country long enough to become citizens and not seek citizenship?

Mr. KEE. Well, sometimes a language difficulty; sometimes it is a question of just not being convenient. I can't really tell you why. But I can tell you that I feel that the reason why the figure for Eastern Hemisphere is higher is that probably around that time they had a desire, in 1979, to want to petition for their brothers and sisters.

Mr. MAZZOLI. It interests me. Some have wondered if there ought not to be some requirement in the law after a 10- or 12- or 15-year period that a person has to elect either to become a citizen or not, with allowances for old people because you won't expect them to learn a brandnew language, and in some cases with allowances for disability. But to take an average, healthy human being who comes

in as a permanent resident and doesn't become a U.S. citizen when they stay here for 8 or 10 years, you begin to wonder.

What would you consider about some kind of a requirement that a person become a citizen?

Mr. KEE. I think it would be a violation of personal liberties. I would advocate his wanting to become part of the American dream and become a citizen, but I think it is a personal preference and he should be at liberty to judge for himself.

Mr. MAZZOLI. So a person should be able to be here as a permanent resident for 20 or 30 or 40 years and not become a citizen?

Mr. KEE. If that is his personal preference I would not object to it.

Mr. MAZZOLI. My time has expired. The gentleman from Texas is recognized for 5 minutes.

Mr. HALL. Thank you, Mr. Chairman.

Mr. Huerta, I have read your testimony and listened to the dialog between you and the chairman. If we had a bill that had only one provision in it and that was to legalize, grant general amnesty to everyone who was in this country up to and including the time that the President signed it into law, nothing else, would you support it?

Mr. HUERTA. That law would have no chance of passing.

Mr. HALL. I understand that. That is not the question. Would you support it?

Mr. HUERTA. Yes. But I don't think it would address the problem that this legislation is trying to address, and I don't think it would address the immigration problem.

Mr. HALL. I gather from your statement that that is about the only thing about this bill that you support, the legalization.

Mr. HUERTA. We don't even support the legalization provision in the bill as written because we think there are problems with it, which I tried to address in my comments.

Mr. HALL. You mean if every person who is in this country illegally up to and through the time that the President signed the bill into law, letting everybody in, without restrictions or reservations of any kind, you couldn't support that?

Mr. HUERTA. We could support that but that is not what is in the bill right now.

Mr. HALL. Suppose it was?

Mr. HUERTA. We could support that.

Mr. HALL. But if you added employer sanctions you would withdraw your support?

Mr. HUERTA. I believe that is accurate.

Mr. HALL. If the bill had a guest-worker program you would withdraw your support?

Mr. HUERTA. Yes.

Mr. HALL. If it had an H-2 program in the bill you would have to withdraw your support?

Mr. HUERTA. That's right.

Mr. HALL. It is going to be hard to satisfy you and your organization.

Mr. HUERTA. I think you are right, Mr. Hall. We are a public interest law firm. We try to——



Mr. HALL. What do you advocate in this bill? I don't see anything that you advocate.

Mr. HUERTA. We think that you need a long-range solution to the problem. I think we need a bilateral approach in which the United States and Mexico sit down together and deal with a lot of issues. Trade.

Mr. HALL. I agree with that.

Mr. HUERTA. Development, migration could be one of those. I think you would have to do it in terms of the Caribbean Basin and other sending countries to try and work with them so that their economies can employ their people that they are not sending here. I think that is the solution to the problem.

Mr. HALL. Do you think Mexico would agree, along with the United States, on this bill if it is passed without any further negotiation with the Mexican officials?

Mr. HUERTA. The bill as it is now, I doubt it. Mexico has never taken a formal position on this bill. They have indirectly commented. But I don't think the President of Mexico has ever said that they are opposed to the Mazzoli-Simpson bill. That is a question of U.S. domestic law and they have made that point many times.

Mr. HALL. Mr. Torres, I don't understand why it is such a terrible thing to have local law enforcement trying to assist the Federal people in enforcing this law. Why do you have such a great feeling against local law enforcement or State law enforcement helping the federals trying to enforce it?

Mr. TORRES. I don't have any problems with the policy that was in place in 1977 and up until last month which clearly indicated that local law enforcement, if they apprehend someone for a violation of the laws that they are responsible for enforcing, and have reason to believe that the individual may be an undocumented alien, they could either put the individual on hold or refer them immediately to the INS for verification.

We believe this policy is reasonable and could be examined further and perhaps enacted into legislation. That is the type of public policy we believe is positive.

If we are having problems in which local police who don't have the proper training, not just in dealing with immigration law, then we can well imagine the problems they will have we are talking about just simply training with enforcing immigration law. I think you are well aware of some of the difficulties local law enforcement has due to a lack of professionalism, and that lack of professionalism has resulted in significant problems between the police and the community.

I had the pleasure of coming before another subcommittee of this committee just last week, the Community Relations Service Authorization, in which this Government agency has indicated to the Department of Justice, to the Attorney General, that a change in the policy will in fact exacerbate problems at the local level.

Now that is not an emotional appeal from a Hispanic representative. That has been analyzed and investigated, they have had hearings on the subject and it has been proven that where police get involved in an area as complex as this you are going to exacerbate police-community difficulties.

Mr. HALL. I disagree with that completely. I don't think you can place a blanket indictment on local law enforcement officials.

Mr. TORRES. I am not making a blanket indictment.

Mr. HALL. I take it that way. You have local law enforcement here in this country as good as any law enforcement that you have got anywhere. I don't think that you will ever enforce this law in these United States unless and until you get local law enforcement working with the Federal Government and trying to help work it out.

I don't think it is going to exacerbate any problem. I think it will if you don't have them.

Do you disagree with the statement that Mr. Gim made about the employer sanctions not in any way displacing American workers?

Mr. TORRES. I don't want to interpret what Mr. Gim has indicated. I believe that there is a displacement factor. I believe the displacement factor is not at the level that people would like to think and people contend that it is.

I don't believe that this bill's passage is going to create 2 million new jobs, as some people have contended. I believe there is displacement, but I don't believe that sanctions are going to in fact improve or significantly remedy the displacement factor. I think that enforcement of labor laws is a more viable approach and if something is required later along the lines of sanctions, then perhaps at that time we ought to look at it, but I don't think that that is the proper approach to take at this time.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Texas has advocated for a long time that we have certain contacts with the Government of Mexico. Let's say that as part of the total answer to the sending nation's problems, one of them is a job program in the form of a government worker program. And if that is agreed to between the two nations, you would object to that, would you, Mr. Huerta?

Mr. HUERTA. There possibly could be a formulation that we could agree on. It would probably require union protected rights for people who are participating in the program, and I would probably want to see it structured like the——

Mr. MAZZOLI. Which means you don't get a program. In other words, if you put enough sanctions or restrictions on it you don't have a program. You were saying that we should consult with Mexico and I agree with you except that if we consult with them and you turn it down, have we consulted?

Mr. HUERTA. If we turn it down?

Mr. MAZZOLI. Yes.

Mr. HUERTA. You have consulted. We don't have to buy the final package.

Mr. MAZZOLI. That is why I didn't buy the final package of the Mexican Congress. I said it is important for us to consider, but we don't have to buy the package. We have a right to reject what Mexico says about the Simpson-Mazzoli bill.

Mr. HUERTA. That is correct. The point I wanted to make is that a workable long-term solution is going to require a mutual coming forward on both sides to deal with more issues than just immigration.



Mr. MAZZOLI. For instance, like where are they going to put their people. They have several natural resources, oil, an ability because of their general climate to grow a lot of winter crops and they have people, smart, intelligent, aggressive, energetic people who are working for a better life for themselves and their families and if the Government of Mexico says one way to do that is to have them come to a country that doesn't have the people to do the kind of work that they can do, that may be one element of a total Caribbean Basin Initiative for Mexico and yet the group here in America will turn it down, their own people here. I don't understand that. Mr. Torres?

Mr. TORRES. Before I answer your question directly, I would like to comment to the question that you asked Mr. Huerta. I can certainly see where you are going with your question and it is a very interesting one. We very much appreciate the fact that this subcommittee is, with the exception of a few, uniformed in its support of the concept of legalization. This support is very positive, but don't misinterpret what we are saying about our position.

If you had a bill that granted legalization to everyone and their mother, at whatever date, I don't believe our organization would be in a position to support it. We would look at the bill and its intent. If the intent was solely to legalize all these people, then we would say it is a good bill and would support it. However, if it is within the context of reforming immigration law, then I don't think that is much of a reform.

If in fact the Mexican Government came back to us and said we want a temporary government worker program, I would be very irresponsible to say I am going to make a decision today. I am going to have to look at what the Mexicans want.

Mr. MAZZOLI. If the Mexicans want it, why shouldn't they have it?

Mr. TORRES. Because it is something that is going to involve two countries, two countries whose futures are very much tied together, two countries whose domestic and international policies have an impact on one another.

Mr. MAZZOLI. I used those words. They said why don't you follow what the Mexican Congress says. They want to scuttle the bill.

Mr. TORRES. No. We looked at that resolution that they passed—

Mr. MAZZOLI. You didn't instigate it, by any chance, did you?

Mr. TORRES. No. But the resolution by the Mexican Congress clearly indicated that they felt that any legislation of this nature had to involve bilateral or multilateral negotiations.

Now the resolution was in total error as to the international institutions that they identified to be in negotiations or the entities to assist in the dialog with, but the thrust of their resolution was the need to have a dialog and the dialog can hopefully result in something concrete and positive between the countries involved.

Mr. MAZZOLI. If you say that despite the dialog it doesn't fit in with your battle plan and you turn it down, I think we have the same right.

Mr. TORRES. We have never said to turn anything down. We have participated in this process in the spirit of democratic ideals. We have not done anything to try to usurp the powers of the institu-

tions. We have respected them. We will look at what people are offering, we will comment and will analyze. We will assess the pros and cons and see if in fact it is in the best interests of everyone.

Mr. MAZZOLI. You could have used the statement that you submitted last year as a statement this year. Nothing but criticism, negativism, not a positive word.

Mr. Gim and Mr. Kee, if there is any group in the country that has been really worked over and been discriminated against in the nation's immigration laws, it is the Asian community, and to your fantastic credit, and I think to your purpose of making the law better, you have been willing to come forward with some do-able things and accept as a general package items that you are not in 100 percent agreement with, but you come forward on that basis.

And with respect to your two groups, Mr. Torres and Mr. Huerta, I have not found you to come forward with alternatives.

Mr. TORRES. I take exception to that. That is not true under any circumstances. We have never supported a do-nothing policy.

Mr. MAZZOLI. I kind of got that impression from the answers to my friend from Texas today, that no answer is no answer at all.

The gentleman is recognized.

Mr. HALL. I have no questions.

Mr. MAZZOLI. Does the staff have any questions?

Thank you very much for your time and trouble. We appreciate it.

We stand in recess until 8 o'clock on Wednesday morning, the 16th.

[Whereupon, at 12:53 p.m., the subcommittee recessed, to reconvene at 8 a.m., Wednesday, March 16, 1983.]

# IMMIGRATION REFORM AND CONTROL ACT OF 1983

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WEDNESDAY, MARCH 16, 1983

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES, AND INTERNATIONAL LAW,  
COMMITTEE ON THE JUDICIARY,  
*Washington, D.C.*

The subcommittee met at 8:35 a.m. in room 2237 of the Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Mazzoli, Hall, Smith, Lungren, and McCollum.

Staff present: Arthur P. Endres, counsel; Eugene Pugliese, assistant counsel; Harris N. Miller, legislative assistant; and Peter J. Levinson, associate counsel.

Mr. MAZZOLI. The subcommittee will come to order.

We are going to take it a little bit out of order in order to get our meeting started.

I will ask our legal panel to come forward: Mr. Maurice Roberts, editor, "Interpreter Releases," former chairman of the Board of Immigration Appeals; Ms. Josie Gonzalez, legislative chairperson, Immigration Section, Los Angeles County Bar; John Shattuck, legislative director, American Civil Liberties Union; Robert Juceam, president, American Immigration Lawyers Association; and Mr. Robert Ervin, member, House of Delegates, American Bar Association.

As some of you may have been monitoring some of our earlier hearings, we have, as a need to get onto our business, limited the statements to 5 minutes. Then we can ask questions. I usually get into the gist of it that way.

So may I implore you to keep to the 5-minute limit? And then, we will get on with our business.

This panel is not listed alphabetically; I guess it is sort of a random sampling. Let me just start the way I read them which is the way they are listed here.

Mr. Maurice Roberts.

Mr. Roberts, welcome. You are recognized for 5 minutes.

## TESTIMONY OF MAURICE A. ROBERTS, EDITOR, "INTERPRETER RELEASES," FORMER CHAIRMAN, BOARD OF IMMIGRATION AP- PEALS

Mr. ROBERTS. I want to commend your staff and the members of the committee for realistically facing up to some of the problems.



In my estimation, many of the features of this bill are quite good, and I can wholeheartedly support them.

What I want to point out is a few of the items that I think should bear further inspection.

First, I want to make it clear that despite the fact that I am editor of "Interpreter Releases," I am speaking here solely as an individual. However, I have had 42 years of continuous experience in this field, most of it with the Government, and much of what I am going to say is based upon my experience on the other side of the fence. That is as representing the interests of the Government which are not necessarily opposed to good law enforcement.

Today, I would like to mention just two items—judicial review and adjudications. These are items in which I have had considerable experience.

The bill makes some very sharp changes in judicial review. It cuts down the time limit for judicial review, for filing an action for judicial review, from 6 months to 30 days. It completely divests the courts of jurisdiction to hear cases involving denied motions to reopen and reconsider, and it eliminates review of orders excluding aliens without a hearing for lack of documents.

First, let me say that it seems to me that the present provisions for judicial review, though perhaps flawed, are working. It is not the availability of judicial review which keeps the INS from executing its mission.

The undocumented alien problem has burgeoned through the years, not because of the availability of judicial review, but because of the inadequate resources made available to the INS. They just don't have the manpower or womanpower.

Judicial review is important. It has been a very important method of making the law live. I do not think that cutting it out or cutting it down is going to add one iota to the capacity of the INS to enforce this law, and it will detract immeasurably from the way in which the law develops.

So much for the limitations on judicial review. I want to pass to something else. But I would say this: If you really think that it is the availability of judicial review that is the culprit, you could amend this statute to get at the weak link which is the automatic indefinite stay of deportation.

I have developed this at length in my paper; I am not going to comment.

Mr. MAZZOLI. I read it last night. I thought it was a very interesting point.

Mr. ROBERTS. Good.

Another thing I have written on at length, and I merely refer to without incorporation, is the possibility of an article I court which I still feel would be a much better way of doing it, would give better adjudication and would eliminate layering of review. I have written at length on this; I refer to it in my written statement, and I am not going into it any further.

The other item I would like to mention is adjudications. The notion that you can speed up the process by eliminating a hearing altogether where an alien does not present the proper document, I think is misguided. Many, many of the cases that arise involve aliens who have visas, nonimmigrant visas, and they are ques-



tioned by an examining inspector because he feels they may really be intending immigrants. If he feels they are intending immigrants under the present system, they are referred for a due process hearing. This can be cleared up one way or another in the usual manner.

The bill would make it possible for him to exclude such an alien with a nonimmigrant visa, and he would get, not a due process hearing before an administrative law judge, but merely a cursory review. This is in my statement.

Mr. MAZZOLI. Essentially, Mr. Roberts, it was not the intention of the committee in that part of the documentation to say adequate documentation or approvable documentation; it was simply documentation.

Mr. ROBERTS. I understand, but I am pointing out the language of the bill as drafted, which would make it possible for this to happen.

Mr. MAZZOLI. I understand.

Mr. ROBERTS. I strongly am in favor of the U.S. Immigration Board set up by this committee. This provision meets many of the defects that I pointed out in my Law Review article with respect to the present system. I think it makes for better judges. It takes the judging entirely out of the Immigration Service.

There is one weakness, though. That is that the judges are still within the Department of Justice. Now, recent events have indicated that even administrative law judges appointed under the Administrative Procedure Act who are theoretically independent, they are designed to be independent—attempts have been made by the agencies to influence them. There are court decisions that are referred to in my article. This would be eliminated if you had an independent immigration court.

Now, with due respect to the Department of Justice, I must say that they have tried to clean up the system by recently setting up a new system. I think it is great because it removes the immigration judges entirely from the INS. But they do not have tenure. How independent can they be in their judgments if even administrative law judges who were designed to have independence can be leaned upon?

Mr. MAZZOLI. Mr. Roberts, time has caught up with us, and we have been joined by others.

[The complete statement follows:]

STATEMENT

of

MAURICE A. ROBERTS

EDITOR, "INTERPRETER RELEASES"

AMERICAN COUNCIL FOR NATIONALITIES SERVICE

before the

COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW  
UNITED STATES HOUSE OF REPRESENTATIVES

concerning

THE IMMIGRATION REFORM AND CONTROL ACT

March 16, 1983

Mr. Chairman and Members of the Subcommittee:

My name is Maurice A. Roberts. I appreciate your invitation to present some comments on H.R. 1510, the Immigration Reform and Control Act of 1983. For the past 42 years, I have been involved continuously and exclusively in various aspects of immigration and nationality law. In the United States Department of Justice from 1941 through 1974, I was in the Immigration and Naturalization Service, the Criminal Division and the Board of Immigration Appeals, with substantial responsibilities in enforcement, court litigation and adjudication. Since 1974, I have been editor of Interpreter Releases, a weekly information service on immigration and nationality matters published by the American Council for Nationalities Service, a national voluntary agency. The views I express here today, however, are entirely my own and not necessarily those of either Interpreter Releases or the American Council for Nationalities Service.

Immigration reform is long overdue. I congratulate the members and staff of this subcommittee for facing up to the realities and working long and diligently to come up with much-needed solutions. Some of the proposed changes, however, seem to me to be not only unnecessary but possibly counterproductive. I shall confine my comments to the provisions of the bill on two subjects, judicial review and adjudications.

#### I. Judicial Review

Judicial review of final deportation orders is now available under §106(a) of the Immigration and Nationality Act (INA), 8 U.S.C. 1105a(a), which prescribes a six month time limit from the date of the final deportation order for the filing of a petition for review. There is no time limit for other allowable forms of ju-

dicial review, such as habeas corpus review of deportation orders under INA §106 (a)(9), 8 U.S.C. 1105a(a)(9), or of exclusion orders under INA §106(c), 8 U.S.C. 1105a(c); or District Court review of other administrative determinations under INA §279, 8 U.S.C. 1329.

Section 123 of H.R. 1510 (hereinafter referred to as the bill) contains numerous restrictions on existing rights of review. The time for filing a petition for review of a final deportation order is cut down from six months to 30 days. Judicial review is precluded altogether of exclusions effected without a hearing under §235(b)(1)(B). The courts are completely divested of jurisdiction to review administrative determinations denying reopening or reconsideration of exclusion or deportation proceedings and other determinations.

Underlying these restrictive provisions is the notion that it is the availability of judicial review that somehow keeps the Immigration and Naturalization Service (INS) from effectively enforcing the immigration laws. This is a false notion. There is nothing in the present law which requires the INS to wait six months (or any length of time, for that matter) before attempting to execute a final deportation order. The present six month limit in §106(a)(1), 8 U.S.C. 1105a(a)(1), is a limitation on the alien, not on the INS. The six month period provided in INA §242(c), 8 U.S.C. 1252(c), is a limitation on the Service's power to detain an alien pending execution of the final deportation order and does not interfere with its power to deport him forthwith if it is able to. Moreover, INA §106(a)(7), 8 U.S.C. 1105a(a)(7), explicitly provides that nothing in that section shall be construed to require the Attorney General to defer deportation because of the right of judicial review made available by the section. Thus, it is not the present provisions for judicial review which impede the INS in its mission.



Cutting down on the time for judicial review will thus not give the Service any greater ability to expel deportable aliens than it has now. Moreover, it will have the effect of barring many poor but deserving aliens from their day in court. It is a well known fact that not all aliens are represented by counsel in deportation proceedings or, for that matter, on appeal to the Board of Immigration Appeals (BIA). Such an unrepresented alien, when notified of the BIA order, is not informed of his right of judicial review or of the time limitation on that right. Many impecunious aliens do not seek counsel until notified by the Service to appear for deportation. Where newly-retained counsel at that point ascertains that there is a tenable basis for judicial review, the opportunity for review may be barred by the shortened time limitation. On the other hand, where the alien is already represented by knowledgeable counsel, the shortened time for access to the courts may precipitate judicial review in cases that might otherwise lie dormant pending maturation of alternate administrative remedies.

Many of the same considerations apply to the other types of administrative determinations now proposed to be denied court review. For example, when it comes to motions to reopen or reconsider, these are frequently the only remedies legitimately available when counsel is first retained after the deportation order becomes administratively final and discovers a legal flaw in the proceedings or that new and meaningful evidence has now become available. The number of recent court decisions overturning administrative denials of such motions bespeaks the continued need for opportunities for judicial review of such denials.

When it comes to exclusion and asylum cases, it should be remembered that the delays and backlogs in such cases have been due to causes other than the availabil-

ity of judicial review of final administrative decisions on the merits. This was recognized last year in the Report of the full House Committee on the Judiciary on H.R. 6514, the direct ancestor of the bill now before you. In H.Rept. 97-890, Part 1 (97th Congress, 2d Session), the Committee stated at p. 53:

The Committee is convinced that the abolition of judicial review of asylum determination would be unwise. Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases. There are now 110,000 asylum cases pending in the Executive Branch. Today, it takes the State Department four months to respond to an INS request for a country conditions report. In turn, over 70,000 asylum petitions are currently awaiting decision by INS. Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases challenging exclusion or deportation orders. And of course, the vast majority of those court cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts.

Insofar as concerns court review of INS and BIA determinations on the merits in individual cases, the proposed limitations on such review will have little effect, if any, on the ability of the INS to cope with the undocumented alien problem. In recent years, we are told, the Border Patrol has been intercepting and returning over a million undocumented aliens annually. Some 3700 had exclusion hearings before immigration judges in Fiscal Year 1981 and in that period the judges completed some 46,000 hearings in deportation cases. Of those that exhausted their administrative remedy of appeal to the BIA, relatively few sought further review in the courts. In the fiscal year ended June 30, 1981, 113 district court actions were filed and 134 were filed in the fiscal year ended June 30, 1982. The the same two years, the cases filed in the Courts of Appeals for review under INA §106(a) numbered 355 and 349, respectively. With such a small percentage of its caseload in-

volved in litigation, it seems obvious that it is not the availability of opportunities for judicial review which keeps the INS from successfully completing its mission.

Moreover, the thirty day limitation on bringing a review action is unrealistically short. Even assuming that all final BIA orders are mailed on the same day they are dated, it must be recognized that first class mail deliveries are highly unpredictable. There may be considerable delay before the final order is delivered to counsel or, if the alien is unrepresented, to the alien himself. Even if the alien learns somehow that he has a right to judicial review and wishes to seek review, it will take time to locate competent counsel, make the necessary arrangements for retainer, and have counsel obtain and review the record to determine whether judicial review is appropriate.

Frivolous litigation brought solely for purposes of delay is not a meaningful stumbling block. The automatic stay of deportation afforded by INA §106(a)(3), 8 U.S.C. 1105a(a)(3), is subject to prompt dissolution on order of the court. The INS does not hesitate to move for summary affirmance under Rule 27, Federal Rules of Appellate Procedure, where it feels the petition for review is frivolous. Many more deportation cases are being summarily disposed of by the Courts of Appeals without oral argument and without reported opinions. Some Circuits (notably the Second) now have in place a sophisticated screening procedure designed for the expeditious termination of meritless appeals.

To the degree that existing avenues of judicial review may permit unwarranted opportunities for delay in frivolous cases, the proposed changes do not meet that

problem head-on. It seems obvious that the weak link in the present system is the automatic and indefinite stay of deportation now afforded by INA §106(a)(3), 8 U.S.C. 1105a(a)(3). An attorney intent only on delay in a case completely devoid of merit has only to file a petition for review under §106(a). The proposed changes do not address this problem. Instead, they merely cut down on the time within which the review action can be brought. Knowledgeable attorneys with frivolous cases will make sure their actions are timely.

It seems to me that the way to avoid indefinite stays of deportation in cases filed solely for delay is to provide only a limited stay in all cases (say, 30 days) during which counsel representing the INS can review the record and oppose further stay where that course appears warranted. In the absence of such opposition, the stay would continue, as at present. If there is such opposition, the court would screen the case preliminarily to determine whether the alien presented a tenable argument which merited further consideration. It could be left to each Circuit to devise its own procedures in this regard. As mentioned, some Circuits already have worked out their own systems.

Such a change in review procedure would be fair both to the alien and the INS. It would provide any deportable alien with a reasonable opportunity to get to court to challenge the adverse decision and to remain here pending court decision if there is any merit to his claim. (Under the present procedure in the district courts, there is no automatic stay of deportation and the alien must first convince the court he is likely to prevail before it will enjoin his deportation pending final court decision). At the same time, the proposal would enable the INS to obtain prompt disposition of litigation that is frivolous and designed solely for dilatory purposes.



Another change which should be considered is to amend INA §106(a) to make it clear that in reviewing a final order of deportation the court shall review every challenged INS determination relevant to the alien's status, regardless of whether the determination was made as part of the deportation proceedings or preceded or followed it. Under the present provision, as construed in Cheng Fan Kwok v. INS, 392 U.S. 206 (1968), only those issues raised and determined in the deportation hearing before the immigration judge and considered on appeal by the BIA are reviewable in the Court of Appeals. This makes for bifurcation of review, which §106(a) was designed to eliminate. See Dastmalchi v. INS, 600 F.2d 880 (3rd Cir. 1981). A one-package review of all related issues in the Court of Appeals under §106(a) would make more sense.

The Select Commission on Immigration and Refugee Policy recommended the creation of a statutory Article I tribunal to hear and determine deportation cases. Such a two-tiered court has much to commend it. I have developed the arguments at length in an article, "Proposed: A Specialized Statutory Immigration Court," published in the San Diego Law Review, Vol 18, No. 1, December 1980, pp. 1-24. I will not encumber the record by submitting a copy to this Subcommittee. For those who wish to read it, it was reproduced in the printed hearings before the Senate Judiciary Subcommittee on Immigration and Refugee Policy, 97th Congress, 1st Session, October 14 and 16, 1981, Serial No. J-97-66, at pp. 235-258. See also Levinson, Peter J., "A Specialized Court for Immigration Hearings and Appeals," Notre Dame Lawyer, Vol. 56, No. 4, April 1981, p. 650. In my view, such a statutory tribunal would be an improvement over both the present system and the changes proposed in H.R. 1510 by providing better trial and appellate facilities while at the same time streamlining the procedures by eliminating unnecessary layering of review.

It is the traditional role of the courts to correct administrative actions which are illegal. This is part of the system of checks and balances that has contributed to the orderly growth of our society. In my view, nothing should be done to keep the courts from effectively curbing illegal administrative actions even in the field of immigration.

## II. Adjudications

### A. Exclusion Without a Hearing

Section 121 of H.R. 1510 would amend INA §235, 8 U.S.C. 1225, by authorizing exclusion without a hearing if the examining immigration officer determines that the applicant seeking entry is an alien who (1) does not have the documentation (if any) required to obtain entry to the United States; (2) does not have any reasonable basis for legal entry; and (3) does not indicate an intention to apply for asylum. If after being informed of his right to request a redetermination the alien makes such request, there is a nonadversarial summary proceeding before an Administrative Law Judge in which the alien may appear personally, and the Administrative Law Judge redetermines whether the alien meets the three conditions precedent to exclusion without a hearing.

Many aliens who apply for admission seek entry as nonimmigrants on duly issued nonimmigrant visas. If the bona-fides of the alien's nonimmigrant status is questioned by the examining immigration officer (who may suspect that he is really an intending immigrant), the alien is now entitled to a due process hearing before an Immigration Judge, with right to representation by counsel and right of appeal to the BIA from an adverse decision of the Immigration Judge. The hearing centers around the alien's state of mind, i.e., whether he intends to abide by the conditions of nonimmigrant admission or intends to remain indefinitely and take up unauthorized employment. The alien is permitted to testify and present evidence,

cross-examine any adverse witness and rebut other evidence offered. If found to be an intending immigrant, he is ordered excluded under INA §212(a)(20), 8 U.S.C. 1182(a)(20), for lack of the documents required of immigrants.

Under the amendments contained in H.R. 1510, if the examining immigration officer determined that the alien had an undisclosed intention to remain indefinitely or to work, he could exclude the alien without a hearing since he does not present the documentation (immigrant visa) required to obtain entry to the United States as an immigrant. The same result could occur if the applicant claimed to be a United States citizen and he had no documents and the examining immigration officer did not believe him.\* The nonadversarial summary proceeding before an Administrative Law Judge is no adequate substitute for the present due process exclusion hearing, which has evolved through long years of experience.

#### B. Adjudication Tribunals

Section 122 of H.R. 1510, which sets up a statutory United States Immigration Board and provides for hearings before Administrative Law Judges appointed under the Administrative Procedure Act, represents a giant step forward. It is a marked improvement over the present statutory scheme and corrects many of the imperfections pointed out in my San Diego Law Review article. It separates the adjudicatory function in the most serious cases entirely from the INS. In providing for Presidential nomination and Senatorial confirmation of the Board Chairman and Members, it opens the door to appointees of high calibre. In giving the trial judge function to Administrative Law Judges appointed under the Administrative Procedure Act, it gives them a greater degree of independence.

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\* Such situations are not unknown. See, e.g., Caban v. United States, 671 F.2d 1230 (2d Cir. 1982).

While the new set-up would be highly preferably to the present statutory scheme, it still has some weaknesses. For one thing, the new tribunals, though separated from the INS, would still be part of the Department of Justice, which is essentially a law-enforcement agency. While Administrative Law Judges are supposed to be independent in their decision making, agency attempts to influence their decisions on the merits are not unknown. See, e.g., Nash v. Califano, 613 F.2d 10 (2nd Cir. 1980); cf. D'Amico v. Schweiker, 51 L.W. 2500 (7th Cir., February 3, 1983). In my view, it would be preferable to divorce the adjudications function entirely from the Department of Justice, which would continue to be responsible for prosecutorial functions, and entrust it to a tribunal entirely outside that Department, such as the proposed Article I court, which would be truly independent.

The Department of Justice has already taken steps to promote separation of functions. By regulations effective February 15, 1983 and published in the Federal Register, Vol. 48, No. 39, February 25, 1983, pp. 8038-8040, 8056-8059, the Attorney General has established a new agency within the Department of Justice, the Executive Office for Immigration Review (EOIR). This new agency, which is completely independent of the INS, is under the supervision of the Associate Attorney General. The EOIR is headed by a Director, who has general supervision over its two components: (1) The Board of Immigration Appeals (BIA); and (2) the Office of the Chief Special Inquiry Officer, consisting of the Chief Special Inquiry Officer and the Special Inquiry Officers, who are under his supervision. (Under INS regulations, 8 CFR 1.1(1), the titles Special Inquiry Officer and Immigration Judge may be used interchangeably).

While the removal of the Immigration Judges from the INS should eliminate many of shortcomings pointed out in my San Diego Law Review article, it still does not give them the independence they should have. Although the former Immigration Judges



who had competitive status are permitted to retain that status, the newly appointed Immigration Judges are Schedule A appointees, like all other Department of Justice attorneys. As such, they lack the tenure and rights that go with competitive status. Such Immigration Judges are under supervision that runs directly from the Associate Attorney General. If Administrative Law Judges with status under the Administrative Procedure Act can be subjected to the pressures referred to in the Nash case, above, can untenured Immigration Judges feel secure in their decision-making? The views of a strong Associate Attorney General can be perceived as having pronounced effect on those under his general supervision. See Matter of Sandoval, 17 I&N Dec. 70 (BIA 1979), opinion of Board Member Irving A. Appleman, dissenting in part and concurring in part, at 86. In my view, this reorganization, while better than what went before, still does not meet the needs of effective separation of functions and does not warrant abandoning the pertinent provisions of H.R. 1510. At the same time, I feel an Article I court would be much better.

Assuming that the tribunals set up in §122 of H.R. 1510 are deemed desirable, the present language appears to be unduly restrictive in some regards. The number of Administrative Law Judges is limited to 70. In addition to their present jurisdiction, they are given jurisdiction over civil penalties under §274A and some will be specially designated to hear asylum cases. Without necessarily acquiescing in the wisdom of the sanctions provisions in §274A, it seems to me that if these provisions are to have any effect there must be prompt and determined enforcement. Unless there are sufficient Administrative Law Judges to give prompt attention to the numerous penalty actions which are bound to arise, the system of employer sanctions cannot be effective. The number of Administrative Law Judges should not be arbitrarily limited to 70.

Conclusion

What I have said with respect to providing the personnel needed to enforce the law with respect to proposed sanctions bears repeating with regard to the rest of the law. In my opinion, much of the present failure of immigration law enforcement lies at the door of past Congresses, which have imposed on the INS the responsibility for administering increasingly onerous immigration provisions without giving the agency the needed resources. The result has been the gradual build-up of backlogs of staggering proportions. Backlogs feed upon themselves. The failure of INS to achieve effective enforcement by promptly executing deportation orders and by promptly locating undocumented aliens is not attributable to the availability of opportunities for judicial review, but rather to the unavailability of needed resources. Limiting the opportunities for fair hearing or for judicial review will not make the needed resources available; only Congress can do that.

In the meantime, as more and more deportable aliens are permitted to remain here (by default, as it were), they acquire deep roots, attachments and equities here and it becomes more and more of a hardship to uproot them. Ours is not the sort of society that can lightly countenance the mass expulsion of so many human beings who have been here so long.

We must face the painful reality that there is no quick or easy solution. Certainly, it is illusory to think that restricting judicial review and cutting down on time-tested hearing procedures will contribute to an effective solution.

Mr. MAZZOLI. Ladies and gentlemen, may I ask your indulgence for witnesses who have come in? They were scheduled a little earlier here. I know California has meetings. If you can move down and share the table I would appreciate that. And we can get to the other gentlemen's statements, after which we will proceed.

I thank you very much. Like I say, we are wrapping up today after the seven days over a three-week period. And we have got a lot of catching up to do.

May I welcome our two colleagues, both the gentleman from California, Mr. Coelho, and the gentleman from California, Mr. Roybal.

With the indulgence of the chairman, the gentleman from California, Mr. Coelho, who was scheduled for 8:15. If the other gentleman has a problem do you want to flip a coin? Is that OK?

OK, Tony, why don't you come on.

Thank you very much, Ed.

The subcommittee is honored to have before us the gentleman from California, Mr. Coelho, who is a distinguished member of our body and who has been very active on this subject for a long time.

Tony, your statement is made a part of the record. You may speak from it, read it, whatever is your pleasure.

#### TESTIMONY OF TONY COELHO, U.S. REPRESENTATIVE FROM THE 15TH DISTRICT OF THE STATE OF CALIFORNIA

Mr. COELHO. Thank you, Mr. Chairman. I will be very brief.

Sorry I am late. As you know, I was on time at a different room.

Mr. MAZZOLI. At a delegation.

Mr. COELHO. Nobody was there, and I assumed you had decided not to hold the hearing.

Mr. MAZZOLI. I wish that were the case. I would have been sorely tempted to.

Mr. COELHO. But anyway, I will submit my statement for the record and be very brief.

Mr. MAZZOLI. Thank you.

Mr. COELHO. As you know, as I have talked to you personally, and as I have talked to others, I consider this one of the most important issues facing the Congress, although I do feel rather strongly that the legislation that was before the Congress the last time did not take into consideration what I call the new ethics, take into consideration what is really happening in this country.

It basically takes care of a different group of people. I really think that the legislation, basically, is unfair to the South and Southwest and that is primarily the Southwest and Western parts of the United States.

I would hope that the legislation that would come out this time would take into consideration that in the last Congress that you had all but one member of the California delegation united against the bill and all members of the Texas delegation, as I recall, united against the bill, which would imply to me—and I hope it would imply to others—there must be something wrong. With those two largest delegations in the House being united against the bill, there has to be something wrong when you consider the philosophical dif-

ferences that exist in particularly our delegation that we would be so united on something.

I think one of the problems is that we are united in opposition for different reasons, and I recognize that. But when you consider the philosophical base that exists in our delegation and you have everyone of us opposed, it would seem that you would pick one of the philosophies or one of the viewpoints from one of the segments of the delegation and go with it.

The fact that the bill is acceptable to other groups in this country does not in any way in my opinion make it right. I think that there are two basic things that those people with dark hair, dark eyes, and dark skin feel they are being discriminated against. I totally, totally agree that they are.

It does not necessarily mean only those of Mexican ancestry or Spanish speaking; it means anybody of dark hair, dark eyes, and dark skin. I think it is unfair and unfortunate that the bill does not in any way protect them.

I also feel very strongly that the bill does not take care of agricultural interests and that when you consider the fact that in California our No. 1 industry is agriculture and that you have a situation where you have highly perishable commodities, you can't treat them like you would an industrial operation.

You do not know when these commodities can be picked or taken care of so that there needs to be something taken for highly perishable commodities. The legislation does not address that problem in any way. You and I have discussed that before.

I support the concept of the H<sup>2</sup> program. I think it is a move in the right direction. But I would hope there would be some provisions in there specifically for highly perishable commodities. I would hope that that determination would be made by the Secretary of Agriculture so that it is not made by us or somebody else; that it is made by them and that it is policed to the nth degree.

I think people that need to use workers under these conditions should be penalized for using these workers by paying a higher salary, et cetera, because I don't believe in exploiting any worker, and particular farm workers.

So I would hope, though, that the criticalness of that type of work would be taken into consideration by this subcommittee. It is something that, as you know, I feel very strongly about. But I probably feel stronger about the discriminatory aspects more than anything else.

That summarizes the concerns that I have.

In the statement, you will see that I point out that the State Department of Labor in California refers workers to our facilities and that in the specific reference in my statement, I point out that the border patrol raided one of our plants and that it felt that there were unlimited undocumented workers there.

The only interesting point is that everyone of those workers at that facility was referred by the State of California.

Mr. MAZZOLI. Were referred, yes.

Mr. COELHO. That type of situation needs to be addressed. It wasn't addressed by last year's bill.

I think that it is folly for this subcommittee not to address that subject. I would hope that as you are on this fast-track system to



report out legislation that you just don't report out what you reported out last year; that you take these factors into consideration. I would hope you and others of the subcommittee would do that. [The complete statement follows:]

## Statement of Congressman Tony Coelho (Calif. - 15)

Before the

Subcommittee on Immigration, Refugees and International Law

House Judiciary Committee

March 16, 1983

MR. CHAIRMAN, members of the Subcommittee, I want to thank you for giving me this opportunity to appear before you today to discuss what I believe to be one of the most important issues facing this nation today--reform of our outmoded and unworkable immigration law.

With unemployment exceeding 10 percent, the American people are demanding that we impose rational and orderly control over immigration, but they want us to be fair about it. We in Congress have the monumental task of fashioning a law which is fair to Americans from every segment of our society and fair to the people from around the globe who seek to live here. That I believe we can do. But unless that law can be fairly and effectively enforced, we will have failed.

It is my view that the following elements are vital to a fair and workable system to control immigration:

1. Employer sanctions accompanied by a simple but secure system of identification.
2. A ceiling on legal immigration.
3. A program of amnesty for long-term illegal residents, which will neither overly burden the American taxpayer nor encourage further illegal migration.
4. A mechanism for the orderly, legal, temporary admission of foreign agricultural workers when American workers are unable, unwilling or unavailable to do so.

For many, many years now, I have supported the concept of employer sanctions. I think there is widespread agreement today that unless we remove the economic incentive to illegal immigration--employment--we will never get a handle on it. The controversy arises when we attempt to put the principle into practice and design a program that will be fair and will work. If we are going to penalize employers and others for hiring illegal aliens, we must provide them with a simple system of identification on which they and the prospective employee can rely. In my view, a tamper-proof ID card is the key to a workable program. It would streamline the complex task of document screening, reducing the burden on those in the employment chain,

while minimizing the potential for discrimination against members of minority groups. I recognize that there are those who argue that employer sanctions, even if accompanied by a tamper-proof system of identification, would increase discrimination against minorities. However, I am convinced that development of a tamper-proof identification issued by a government agency to all those eligible to work in this country is the only way a sanction program can be fair and effective. As a matter of fact, I will not support employer sanctions unless they are accompanied by single, fraud-proof identifier.

The bill before us today would impose sanctions only upon employers who hire unauthorized workers and employment agencies who refer such workers for a fee. That is unfair and unrealistic, and I feel the requirement for checking identification must be extended to all of those who refer or recruit for employment, including state employment agencies and union hiring halls.

To illustrate my point, I would call your attention to an incident which recently occurred in Fresno, California. On February 23rd the Immigration and Naturalization Service conducted a raid on Zackey Farms, a poultry processing plant, where about 48 undocumented workers were arrested. The plant employs as many as 500 workers, if all three shifts are included, and people at INS tell me they feel they only scratched the surface. Although they had a general search warrant, it apparently took them nearly ½ hour to enter the plant and by that time many of the workers had fled.

What is so unusual about the raid at Zackey Farms is not that illegal aliens were found, but rather that all of the workers were hired through the California Employment Development Department. For the past 3½ years Zackey has had an exclusive contract with the State Employment Agency to provide all of its production workers. The employer had every right to expect that he would be able to rely upon the screening procedures followed by the State, but obviously he was in error. The INS Officer in Charge in Fresno has publicly criticized state policies that prohibit EDD from asking applicants for proof of legal residence, but it is unlikely those policies will change unless Congress requires it. As a matter of fact,

in an opinion rendered in Sacramento, EDD's legal department warned staff members not to request proof of legal residence because to do so would constitute discrimination. I have asked EDD to send me a copy of that opinion and will be happy to share it with the Subcommittee.

I am sure you will agree that we cannot ask employers to follow a procedure which a government agency refuses to follow. While current law does not impose sanctions on employers who hire illegal aliens, employers are nonetheless penalized when production is interrupted and employees, whom they had every reason to believe had a right to work in this country, are removed by the Immigration and Naturalization Service. The State government agency was not faced with a similar penalty, and it will, I suppose, continue to refer workers who cannot legally accept the employment, indeed whose very presence in this country is a violation of our law.

State employment agencies, union hiring halls--anyone who recruits or refers for employment--must be held accountable for those workers and I urge the Subcommittee to cover all of them in the legislation it reports.

It is particularly important for state employment agencies to follow careful screening procedures since they are also our main source of data for determining the availability of American workers. Ironically, had Zackey Farms attempted to obtain its production workers through the legal immigration process, its requests for alien employment certification probably would have been denied because of the availability of "American" workers.

Any new law which uses the availability of American workers as the main criteria for admission of foreign workers to this country, either temporarily or permanently, must be based upon reliable data. Currently that data is far from reliable. A fair and workable law demands that data on the "American" workforce be accurate and those who collect it must be required to follow standard screening procedures.



With respect to legal immigration, I support an annual ceiling of no more than 450,000, to include refugees and asylees since they are now, for all practical purposes, admitted for permanent residence rather than temporarily. I do not agree with those who argue that by putting immigrant and refugees under one ceiling, the humanitarian and human rights values for which we stand as a nation would be seriously questioned. We are a generous and humanitarian people and we have never failed to respond to true crises and emergencies abroad. Should such a crisis occur in the future, I have no doubt that the American people would open their arms and their hearts as they have done in the past and, if necessary, compel Congress to respond with special legislation.

As far as legalization or "amnesty" is concerned, I am frustrated by the issue as so many people are. A humane solution to this difficult problem is needed, but in our humanity for the unfortunate illegal immigrant we must not overly burden the American people. It is frequently argued that illegal aliens in this country are here to work, not to accept welfare and I would agree. However, that does not mean many of those workers will reject welfare and other benefits once they become available. I do not consider it unfair to deny public assistance to the beneficiaries of amnesty for up to 5 years, since current immigration law applies a similar standard to most aliens admitted to this country for legal residence. To do otherwise, in my view, would not only cause resentment on the part of those who have obeyed our immigration law, but would overly burden an already overburdened American people.

California agriculture is considered one of the most diversified in the world, with no one crop dominating the State's farm economy. This is illustrated by the fact that most crops individually account for less than 2 percent of the State's total gross farm income. California leads the nation by a wide margin in the production of fruits and nuts and vegetables. California accounts for 50% of the Nation's cash receipts for fruits and nuts; while for vegetables, its share is about one-third.

There is often a mistaken perception of non-Californians that our state is characterized by huge corporate monolithic farms. This may be a result of the fact that California is so efficient in its production, producing about 10% of our nation's total farm products, on only 3% of the farm land. The truth of the matter is that the average size California farm was 424 acres in 1980, while the national average size farm was 429 acres in that period.

The San Joaquin Valley, a trough that runs the length of the state, can be basically characterized as predominately field crops on the western side, and mostly orchards and vineyards on the eastern side of the valley. The Congressional District which I represent covers both sides of the valley; the growers on the West side produce generally less labor intensive commodities, whereas the generally smaller producers on the east side, where a forty to eighty acre orchard is common, have intense needs for large numbers of workers for a relatively short period of time.

I would like to submit for my Colleagues review a report prepared by the University of California Cooperative Extension entitled Man Hour Requirements in Selected California Crops. It is the only work of its kind of which I am aware which outlines, on a monthly basis, the estimated man hours of labor per acre used in production

of several major California commodities. It illustrates numerous examples of the dramatic increase in demand for labor in the Central Valley, especially in the months of summer and fall harvests of tree fruits. Differences between the relative need for labor are also clearly illustrated. Compare, for example, the labor requirements for the harvest of valencia oranges, which are about 7 to 10 man hours per acre over a period of seven months to that of plums, in which a total of 75 man hours are needed for a two month harvest season.

These figures point up the differences in the industries involved. The point is that a program that will work effieciently in a less labor intensive commodity, or a commodity that is harvested over a longer period of time, will not necessarily translate to a highly perishable, highly volatile commodity. I urge that Committee members keep these facts in mind as you review proposed agricultural proposals for dealing with the need for an expanded, more flexible temporary worker program. Various segments of the industry, because of their varying demands for labor, have varying needs for the structure of the program. For this reason, I personally support the concept of something of a "two-track" system; that is, streamlining of the so-called "H-2" program and introduction of a new "free market" approach for some of the highly perishable commodities, such as those grown in the Central Valley of California.

I would like to expand now, on some of my specific concerns about provisions of the proposed bill, both as it now lies before the Committee, and as the amendments of the Education and Labor Committee as presented last year would impact it.

The bill provides that temporary foreign workers can remain for a period to be specified by the Secretary of Labor, while there have been attempts to limit this to no more than 8 months

during any calendar year. The establishment of an 8 month limit in any calendar year fails to take into account the winter growing seasons found in the South and in the West. This could force growers to change workers mid-season, causing confusion and adding unnecessarily to costs of Administration of the program. I believe that employment should be allowed for eleven months, so that workers may be transferred from one crop to another, and so that all agricultural employers would be treated equally.

It is further my belief that the program should be administered by the Department of Justice, with the advice and consent of the Departments of Labor and Agriculture. Immigration -- both permanent and temporary -- is the responsibility of the Attorney General. That responsibility should not be transferred to the Secretary of Labor exclusively, where H-2 workers are concerned.

There have been attempts in the past to require that applications for certification be filed by employers 80 days in advance. While it is true that present Labor Department regulations require that employers file at least 80 days prior to date of need, practice has shown that many employers file even as much as 90 days in advance in order to assure that applications will be approved in time. The problem is that it is virtually impossible for employers to predict with any degree of accuracy the date that he will harvest 90 days in advance. Weather conditions greatly impact the timing of harvest one way or another. As an example, unusually warm weather may accelerate the time of harvest greatly, while cool weather or overcast skies may cause substantial delays. The program must have adequate flexibility to meet the needs of employers in this regard -- once again, particularly in the highly perishable commodities such as cherries and strawberries.



I am certainly in agreement with those who want to make certain that the temporary worker program is NOT used by employers to break strikes. I would strongly oppose the use of this program for such purposes. Even during the time of harvest, I am informed that growers share my opinion that an H-2 or other temporary alien worker should not be certified for the purpose of becoming a strikebreaker. Crafting the language to define a strike, however, may be a somewhat difficult task. I support the inclusion of language which would prohibit certification for the program if there is a lawful strike by a majority of the workers, or a lockout involving work stoppage of workers is in progress in the occupation and at the place of employment.

The question of provision of housing under a temporary alien worker program will continue to be a problem -- particularly for my 40 acre growers of trees and vines. Larger, diversified farming entities, where grower<sup>has</sup> a variety of crops with harvest period stretched over an extended period of time, such as the corporate entity found in the lower San Joaquin Valley, can afford to provide housing for his workers. Cost of construction and maintenance can be spread over a period of many months. On the other hand, consider the 40 acre raisin farmer who hires people outside his own family only during the harvest...and then needs 200 employees to pick the grapes and turn the trays ... for just one month out of the year...This farmer simply cannot afford the expense of actually physically providing the housing. Arrangements for an "in lieu housing allowance" certainly makes sense, and are crucial to making this program workable for our small specialty crop growers. Should additional study show that temporary housing (ie, in hotels or in other arrangements) are not

generally available at the time and place needed, perhaps we should consider some sort of cooperative agreement for the provision of federal housing for such employees, reimbursed by the growers involved in the program.

In short, I feel we must search out creative, flexible approaches to meet the needs of the Agricultural industry. I am aware of a number of on-going programs in the industry to attempt to seek long-term solutions to labor needs. I have been working to put agricultural employers in my district in touch with unemployed labor forces, such as the Hmong, which I view as a good step to expanded cooperation. Changes in employment practices must come slowly-- and with careful consideration of the precarious nature of the current farm income picture.

I would be pleased to provide the Committee with any additional information to further clarify the needs of the agricultural community. Thank you for this opportunity to speak before you.

**Mr. MAZZOLI.** Thank you very much. I appreciate that.

Let me take a little gentle issue with my dear friend. He says it was unfair, unfortunate, having to do with discrimination. The gentleman and I have talked many times. I think that this committee wrestled long and hard. I think the gentleman would have to concede the bill is dramatically better than the Senate version of the bill, dramatically better than the way it started out, only because this committee listens.

To say that it is unfair and unfortunate, certainly it is the gentleman's position; he is entitled to it. But I think that the potentials that are in the bill can be made better. We hope we can find better formulations. But they represent the work of Congressman Frank and Congressman Rodino and other ones who have at the full committee markup inserted language which certainly takes a giant step in the direction of protecting against unwitting discrimination.

**Mr. COELHO.** I would just point out, Mr. Chairman, if you don't mind if I interrupt—

**Mr. MAZZOLI.** Sure.

**Mr. COELHO.** Mr. Frank and Mr. Rodino happen to be good friends of mine, as you well know, particularly Mr. Frank, because of a lot of reasons. But I would submit to you that neither of those gentlemen are from the Southwest or the West, and neither of those gentlemen have large reputations of the type of people or concerns that a lot of us in California and Texas and those areas have.

I would hope that your expertise is not limited only to those, but is received from some of us from those areas of the country.

**Mr. MAZZOLI.** I think the gentleman would not want to leave the impression this committee has done anything but be forthcoming. I mentioned those two gentlemen only because they have spent their

respective lifetimes working in behalf of the people who have been discriminated against, regardless of where they are and who they are. So certainly, we will do everything we can.

The gentleman and I have talked at length about the peculiar nature of perishable agriculture as opposed to the other kind. The gentleman from Kentucky who was born in the city and never saw a farm until quite late in his life has learned a great deal in a short time about agriculture. It is almost like all you ever wanted to know about agriculture and were afraid to ask. That's what I have learned.

I am trying or will try, I can assure you of that, Tony, to work language in here which to the extent it can be done recognizes the difference between crops that can be harvested several days on either side of a date and those which have a critical period of hours on each side of that date.

Of course, as you know, part of what has been done in the committee, which I might say is objected to by many people right in this room today, in drafting the H<sup>2</sup>, was to try to make it flexible and responsive and usable to agriculture.

But there are those who say that you don't need that at all. The fact is, you need the identical labor language which was reported as an alternative which, of course, in my judgment makes the program totally unworkable.

So we certainly want to help you in that respect.

Lastly, the referral, the gentleman will be happy to know, has been brought up by a number of people from agricultural States. I think that the committee is disposed to suggest that if a person is referred by a State or Federal employment agency, they should be able to take that person, sight unseen, and if it turns out that the State agency was derelict and didn't winnow out the undocumented from the documented, that is a matter that the law authorities would take up with the State or the Federal Government, not with the particular employer.

Mr. COELHO. You understand, Mr. Chairman, in the State law, it is illegal for the State Department of Employment to ask if somebody is documented or not?

Mr. MAZZOLI. We were also told that, and we hope we can make some kind of an adjustment to accommodate that fact, that there are certain privacy laws and other regulations.

My time has expired. The gentleman from Texas is recognized.

Mr. HALL. I have no questions.

Mr. MAZZOLI. The gentleman from Florida.

Mr. McCOLLUM. I have no questions.

Mr. MAZZOLI. Tony, thank you very much.

Mr. COELHO. Thank you, Mr. Chairman.

Mr. MAZZOLI. We now welcome Chairman Ed Roybal, the gentleman from California.

The chairman's statement is made a part of the record. The chairman is recognized.

#### TESTIMONY OF EDWARD ROYBAL, U.S. REPRESENTATIVE FROM THE 25TH DISTRICT OF THE STATE OF CALIFORNIA

Mr. ROYBAL. Thank you, Mr. Chairman.



My name is Edward R. Roybal. I represent the 25th District of the State of California.

Mr. Chairman, I would first of all like to thank you for the opportunity that you have given me and other Members of the House, interested citizens, and others who will testify before your committee. I think it is commendable that the committee is listening to this testimony.

I realize that you have a very difficult task. No matter what this committee does, there will be opposition somewhere.

It is my understanding that the bill that you have before you is the identical bill you had last year. If that bill is taken to the House, it will meet with the same opposition. There will be a long debate, no doubt, on a piece of legislation that will not meet with the approval of the vast majority of Members of the House of Representatives and perhaps not even the Senate of the United States.

But it is also my understanding that the bill that was introduced, identical to that of last year, is just a starting point; that this committee is willing to listen and consider other recommendations that have already been made by those who have testified before me.

Mr. Chairman, I believe this to be a proper position for the committee to take. I do not wish to take the time of the committee to go over each item of the bill. The real purpose of my being here this morning is to urge the committee to consider the testimony that has been presented for and against the bill and to bring to the House a compromise version of a bill that may have the support of the House.

May I again repeat to you that no matter what compromise you bring, no matter what bill you present, it will not have unanimous support. There will be opposition to almost every article. But I think the one thing that this committee must do is, first of all, to examine the reasons for the influx of illegal aliens into the United States.

There is no doubt that there is a difference, an economic imbalance, between Mexico and other Latin American countries, and the United States. And as long as that continues, the influx of workers coming into this Nation will continue to increase.

They come because they believe that there are jobs here in the United States; and that there are more jobs here than there are in their country. And in many instances, it is my belief that these men and women are exploited by employers here in the United States.

The truth of the matter is that testimony after testimony has indicated that employers in this nation like to hire those who come from other countries because of their dedication to work. They feel that they get more for their dollar than they do when they hire someone from this Nation.

I was told on many occasions by employers that they do this because they get their dollar's worth; they find no absenteeism on Fridays or on Mondays, in contrast to those of us who were raised here and are in the working force.

As I examine the situation, I think there is a great deal of truth to that. These are some of the things that must, of course, be considered as you write this legislation.



It is my understanding, Mr. Chairman, that there are three titles that must be in this bill. In discussion with you and other members of the committee, I was told that the three titles or three sections that must be in this bill are sanctions, legalization, and the H<sup>2</sup> program. I am going to discuss those three subjects with you briefly.

I know that you received testimony, too many words, perhaps, on this subject matter.

Mr. MAZZOLI. It is a good statement, though.

Mr. ROYBAL. First of all, let me say that the bill as it is now written, the same bill that was presented to the House last year, is completely unsatisfactory. We must do something about amending or preparing a compromise bill that would come to the House of Representatives as soon as possible.

With regard to sanctions, we firmly believe that a combination of civil and criminal with penalties will definitely result in discrimination, as has already been stated by my colleague from California, Mr. Coelho; and that the discrimination aspect of this provision is not being addressed in the bill.

The bill places the responsibility on the employer. I believe that to work, that responsibility should be on the immigration authorities. However, it seems to me that something can be worked out with regard to this particular provision.

We must carefully examine the committee's recommendation with regard to an identification system, I feel that there are many flaws in the recommendation made by the committee but that that also can be addressed and something done about making it more equitable, fairer, seeing to it that the civil rights of individuals are not violated.

Now, the second item is that of legalization. I am going through this very rapidly, Mr. Chairman, because I realize time is of the essence.

Mr. MAZZOLI. Thank you very much.

Mr. ROYBAL. But in this matter of legalization, the bill proposes a two-tier system of legalization.

We feel that there should only be one tier; that if legalization is proper to be recommended to the House, that it should be one form of legalization with one date—perhaps January 1982.

It should be a legalization procedure that sets specific requirements for documentation so that those individuals would know exactly what it is that they need to satisfy for legalization.

It is my understanding, Mr. Chairman, that the immigration authority, even though you have no reported bill as yet, already has a plan for the legalization of millions of individuals in the United States.

As we carefully examine that plan by the Department of Immigration, we find that it, too, violates the rights of individuals. You know, they are very aggressive, and I suppose that this is natural with those who deal with that subject matter. But the presentation that was made to us by the immigration authorities themselves clearly indicates that a great deal has to be done to keep them from doing things that would violate the rights of individuals.

We were told that it is estimated that there are in the United States anywhere between 4.5 and 6 million people without documents. I suppose that they are referring to people who come to the

United States from this hemisphere alone. Nothing was said in this presentation about those who come from Europe, which may be another 4 million; nothing was said about them.

The end result is that there was no specific plan for those who would not qualify, stating to those who were briefed that 1.5 million will probably be legalized, 1.5 million out of 6 million. The question arises what is going to be done to the other 4 or 4.5 million people? How are they going to be handled?

The immediate answer is we are going to ship them all back. What is going to happen to the families of those individuals? Maybe a member of the family does not qualify, but others do. Here again we see the separation of families. How are you going to provide for the rights of those individuals?

Which brings us then to one other important subject matter that we discussed during last year's debate. That is the matter of the unification of families. You probably remember that that was the subject matter of great debate. I was told then that that was not in the bill; that the Senate provision that dealt adversely with this subject matter was not part of the House legislation. I complimented the committee for that fact.

But the truth of the matter is that it is still in the Senate version. If the vote is taken on that one item, and if the vote is so overwhelming as it was last year, it is going to be very difficult for the chairman of the committee to agree to any compromise.

It seems to me that the Senate subcommittee, too, should carefully consider before it brings out the legislation to the full committee the advice given by the ladies and gentlemen who have testified before you. I think that this matter of family unification, among all the things that can be done, should be the subject matter of great consideration by this committee and that the civil rights of individuals not be violated.

The other thing that concerns me with regard to legalization is that there is very little said about providing funds for the adjustment of thousands of individuals in the United States that today surround the courthouses in Los Angeles and Miami and every large city with only two clerks or three clerks to take care of them.

They are there early in the morning. The offices don't open until 8 o'clock, but they are there at 6. Many of them just stay there all night in order to be the first in line.

We have not been able to provide the funds that are necessary to have them adjust their status. They are eligible now. They don't have to come forward; they already have. We don't provide the funds for their adjustment. That is a subject matter that should be addressed by this committee with funds provided in the legislation that you have before you.

I think we must look again at the 1976 amendment that reduced the quota from Mexico from 40 to 20. I think that that is a subject matter that we all agree on should be carefully considered by this committee.

Now, just a moment ago, Mr. Chairman, my colleague from California testified and took a position in favor of the H<sup>2</sup> program. He said this was a move in the right direction.

Here is an example of what I meant when I said that you are not going to please everyone regardless of what is done in the legisla-



tion that you present to the House. I don't agree with my colleague from California that this is a move in the right direction.

I think the H<sup>2</sup> program as proposed in the legislation that you introduced this year and as proposed in the legislation that we considered last year is inconsistent. On the one hand, we impose sanctions against employers, and on the other, we tell employers you can have all these legal individuals, any number that you want, with no cap on the H<sup>2</sup> program if you so desire.

I am concerned not so much with the numbers that are to come in, but with the program itself, concerned about the fact that it is a back-door way of bringing into this country another Bracero program which, in my opinion, was a fiasco for it lasted too long. The Bracero program served its purpose during the war, but for it to be in existence for more than 20 years, it just seems to me too much of a very bad thing that did some good.

This H<sup>2</sup> program in my opinion is the same kind of a program. But it doesn't have the benefit of some of the protections that we had during the Bracero era.

For example, these men come in without physical examination, but we all know that the incidence of tuberculosis and other communicable diseases and diseases that we haven't even heard of before is increasing in this Nation—tuberculosis particularly.

It seems to me that if such a program is going to be put in place, we should protect the health and welfare of the people of the United States and that some system of screening, health screening, should be made available.

It is also my understanding based on statistics, studies that have been made, that when these people come into the United States, they just remain here; they don't go back to their country.

Since there is no particular compulsion for them to return, they want to stay here, and they remain here. Something must be done if an H<sup>2</sup> program is to be put in place about that particular system—perhaps not paying these individuals until they are ready to board, ready to go back to their country of origin.

All of these things are subject matters that must be considered. And while I don't agree with my colleague from California, this, too, perhaps can be compromised.

I believe that you have a tough task, Mr. Chairman. I think and I hope we can be of help to one another so that when you present this legislation to the full committee, it is one that is based on compromise based on understanding, and based on compassion. For this is a subject matter that will affect millions of people. Some will remain in the United States, but the vast majority of these people have only one destiny, and that is to be rounded up as cattle as they were in the thirties and have been recently in immigration raids in the United States, and carted back to their country of origin, only to return in many instances before the return of the bus that took them to the border.

This is a difficult task, and I wish you every success in addressing this tremendous problem.

[The complete statement follows:]

STATEMENT OF HON. EDWARD R. ROYBAL, M.C. BEFORE THE JUDICIARY SUBCOMMITTEE ON  
IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

March 16, 1983

Mr. Chairman, thank you for this opportunity to appear before your subcommittee to discuss the concerns that I have with regard to the introduction of H.R. 1510, which is the same bill as reported out by the House Judiciary Committee last year. It is my understanding from our conversation last month that you regard the introduction of your bill as a starting point for serious discussion and that you are most interested in listening carefully to my concerns as well as those of others.

With that in mind, I would like to begin by addressing the problems related to employer sanctions as proposed in your bill. This section will impose criminal penalties and civil fines on employers who knowingly hire undocumented workers. I firmly believe that the impact sanctions will have on undocumented immigration will not outweigh the discrimination they will cause in this country. The combination of civil and criminal penalties with fines for failure to comply with paperwork requirements on hiring will have a chilling effect on employers who will do everything possible to avoid trouble or hassles with Department of Justice officers. There is no doubt in my mind that employers will act to hire only "safe" looking workers and refrain from hiring U.S. citizens or legal residents who look or sound "foreign." How can we expect employers to act otherwise when they are now burdened with the task of examining identification documents of a potential employee -- documents that can be easily forged and sold underground -- and then having to make some determination of that employee's legal status. Any practical businessman is going to play it safe and hire only those he knows. Department of Justice officers will not regard as suspect. My concerns over the impact and effectiveness of sanctions is based on the following facts:



- Last fall, an INS regional office in Utah issued a letter threatening employers with sanctions unless they turned over employees who did not have work authorization, and consequently, employers began laying off workers en masse.
- As early as last January, 1982, following the announcement of the Select Commission and the Reagan Administration recommendation for employer sanctions, companies in southern California, already fearful of sanctions, asked employees for work verification within 10 days, or else be laid off.
- Further, during the period from April to July, 1982, in the aftermath of the INS' "Operation Jobs," there were reports of lay-offs, with Legal Service offices throughout the country being contacted by employees laid off because of the threat of sanctions.
- Interviews with 26 randomly selected employers who had been hit by the "Operation Jobs" raids in five major cities revealed that nearly all U.S. workers who took the vacated jobs left within a few days or weeks, largely because of the low wages, long hours and poor working conditions.
- The commitment to enforcement, inherent in any success of the sanctions program does not exist at this time. An August 31, 1982 report by the General Accounting Office on the enforcement of laws regarding employment of aliens in selected countries states that "such laws were not an effective deterrent to stemming illegal employment." One of the reasons was that the laws were not being effectively enforced and sufficient personnel was lacking.
- Protections against discrimination are not sufficient in this bill, despite the fact that the bill requires that the Civil Rights Commission monitor

the implementation and enforcement of employer sanctions and investigate allegations of discrimination. It is already well known that the Civil Rights Commission has already analyzed the impact of employer sanctions and has recommended and testified against their adoption.

- The bill does not address the issue of economic development and other crucial factors that affect the flow of illegal immigration into the U.S. The movement of people from areas of labor scarcity to areas of "perceived" need is both a natural and historic phenomenon. With Mexico, for example, we see a migratory problem that is deeply embedded in the structure of the international labor market that unites the two countries. The U.S. Ambassador to Mexico, Mr. John Gavin, raised similar concerns in a memo to the State Department last fall.

I continue to be baffled by certain inconsistencies affecting this legislation. The underlying urgency in pressing legislation is the apprehension that we have lost control of our borders. Time and time again, I have heard my colleagues state that we have to curtail the influx of undocumented workers who are supposedly taking jobs away from domestic workers. Yet, when the Committee passed a backdoor Bracero program -- as outlined in Title II of this bill -- few rose to protect the interest of domestic workers. My overriding concern is the possibility that the H-2 program, as offered by this bill, will lead to a revival of the Bracero program such as the one this country used to employ 4 and 5 million Mexican temporary guestworkers from 1942-1964. Let's look at the facts:

- The experience of the Bracero program has clearly shown us that reliance on temporary foreign labor creates many domestic and international problems.

The Bracero program was terminated because of the many Mexican workers who were subjected to exploitation and discrimination. Other European countries have also recently curtailed the use of guestworkers because of similar problems.

- This bill overlooks the weaknesses and problems which now exist in the H-2 program. The changes adopted facilitate the entry of hundreds of thousands of temporary foreign workers, thus increasing the economic incentives for recruiting H-2 workers. This will only increase this country's dependence on cheap, foreign labor to the detriment of U.S. migrant workers.
- Most restrictions which protect domestic workers have been weakened. The shortening of the certification period, change of the recruitment standard and dilution of the role of the Department of Labor in the process all contribute to the erosion of protections for domestic workers. Displacement of U.S. agricultural workers is likely to occur.
- Expansion of the H-2 program as outlined by this bill will serve to encourage more undocumented immigration. As our experience with the Bracero program showed us, undocumented immigration is spurred by the fact that work appears to be so plentiful here that it cannot be done by our own labor force.

Finally, H.R. 1510 provides for the legalization of certain undocumented workers who have been here prior to January 1, 1980. While I agree that a legalization program is certainly an essential component of any immigration reform legislation, I firmly believe that it must be both comprehensive, equitable and easy to implement in order to be effective. It is in the best interests of this country to bring this large class of persons

into the mainstream of our society and under the protection of our laws. This bill, unfortunately, does not come close to addressing this pressing problem. The legalization provisions are restrictive, capricious, unnecessarily complicated and vague, thereby decreasing the possibility that few of those who qualify will come forward. My essential concerns are based on the following facts:

- The proposed 1980 cutoff date will leave many undocumented workers without any means of legalizing their status, and will continue to perpetuate a large underclass of aliens who have strong family and community ties.
  
- The bill creates a stigmatizing "temporary resident" category that will have the effect of deterring many undocumented aliens from coming forward to apply. Our recent experience with the immigrant group known as the "Silva class" (created as the result of the INS' misallocation of 145,000 visas for Cuban refugees) should have taught us that intending immigrants will be extremely hesitant to come forward for an adjustment of status they perceive as only "temporary."
  
- The strict eligibility requirements outlined in the bill, as well as the lack of definition as to exactly what type of documentation will be accepted will also discourage many aliens from coming forward. The documentation the INS has traditionally required to prove residency (such as that required to adjust to permanent status under Section 249 of the Immigration and Nationality Act) may be difficult for many undocumented aliens to produce to prove continuous residency, such as: rent or tax receipts, employment records, census records, bankbooks, etc. This will be especially difficult for domestics and highly transient workers.



- This bill prohibits newly legalized aliens from receiving many of the benefits for which they will nonetheless be paying taxes, largely based on the assumption that once legalized, all these people will quit working and become public charges. The fact is that most studies show that Mexican migrants (legal and illegal), for example, pay taxes consistent with their earnings and make a substantial contribution to the finances of public services. The majority of undocumented aliens have social security, federal and state income tax withheld from their salaries. Many undocumented aliens do not file annual income tax returns, thereby foregoing federal income tax refunds.

In order to obtain a clear understanding of the cost issue, I have surveyed the present available literature on the subject and have summarized my findings, which I would like to submit for the record. This summary greatly substantiates my claim that these aliens are tax paying residents and contribute significantly to federal, state and local revenues.

In light of the concerns I have outlined here, I have attempted to look carefully at possible remedies and intend to introduce very soon my own immigration reform bill. I believe my bill offers a sound basis for serious discussions among all parties who are committed to fashioning a measure that protects the constitutional and civil rights of people while achieving a balance of interests.

Mr. MAZZOLI. Thank you. I certainly thank the gentleman from California for his comments today and for his comments about the work the subcommittee has done. I am very proud of my colleagues and the subcommittee work product. I think that it certainly reflects a willingness on our part to listen to all sides and it expresses a devotion on our part to try to accommodate as many interests as possible.

The gentleman from California talks about the legalization, the employer sanction, the H<sup>2</sup> program, mentions the potential for unintended discrimination. He talks about the ID system and the need to make it more fair and equitable. He mentions the need to go, in his judgment, to a one-tier approach to legalization and have the kind of documentation and INS system for accepting people for legalization in a way that they are not subject to dangers or to deportation, for example, if they don't have the exact paperwork.

The gentleman mentions the need to remember family unification as an underlying element of the spirit of this country and the fact that the Senate bill is defective in this particular area and for us to be very watchful of that. And the gentleman is, of course, the distinguished chairman of a subcommittee of the appropriations committee and talks about funds needed to implement the bill.

The gentleman will be pleased to know that the subcommittee has clearly and early on expressed its determination that in the bill, not separately, not by way of supplemental, but in the bill will be written the funding needed to implement the bill as well as to continue the work that INS is currently doing.

In other words, you really have a two-phase program. INS can't do what it is now charged to do—and I don't mean just the border, because we are talking about the public service that they render, too. I might say we will be looking to him the gentleman to help us in that quest for money.

The last thing the gentleman mentions is the H<sup>2</sup> program. The previous witness, our friend from California, Mr. Coelho, has a very different point of view. So it shows you the difficulty the subcommittee has.

I can assure the gentleman, the chairman, that not only will his comments be very helpful to us, but he has already been very helpful to us in personal conversations he and I have had as well as conversations our staffs have had.

So we look forward to that kind of continuation, Mr. Chairman. I also appreciate the just good wishes and prayers. If he wants to send lilies of the valley, they are a pretty flower. I may need those at the end of the line.

But if there is a chance to write a bill, we will certainly do it and be in touch with the gentleman.

Mr. ROYBAL. Mr. Chairman, I sincerely hope that we can work something out. It is my intention to present my version of what the bill should look like within the next few days—perhaps before the end of 2 weeks. It is now in preparation. In fact, it is completed. We have to have it checked.

We are taking this bill and making it available to various organizations throughout the country that have been opposing the committee bill, and seeing what kind of support we have for the bill that I will be presenting.

Mr. MAZZOLI. Thank you very much.

I would say to the chairman the quicker he can do that the better because this is the last day of the hearings. We did suggest some time to our colleagues for markup. That is in the early part of April.

So I would ask the gentleman, to the extent that he can, to give us that information before we go into markup. I thank the gentleman and appreciate his help. Have a good day.

Mr. ROYBAL. Thank you.

Mr. MAZZOLI. Is Major Owens here, Congressman Major Owens?

Would the legal panel be also cordial to the idea that we now hear from our new Congressman from Brooklyn?

Please, Mr. Owens. You have a colleague with you, Mr. Colin Moore, president of the Caribbean Action Lobby.

Please, whoever wants to come up, sit down. You are certainly welcome. So I would recognize the gentleman for his statement and then Mr. Colin Moore for his statement. Then we will have questions, and we can get on with it.

Welcome to the room, and welcome to Congress, and we shall hear you.

**TESTIMONY OF MAJOR OWENS, U.S. REPRESENTATIVE FROM THE 12TH DISTRICT OF THE STATE OF NEW YORK, ACCOMPANIED BY COLIN MOORE, PRESIDENT, CARIBBEAN ACTION LOBBY; AND ANTOINE ADRIEN, PRIEST, HAITIAN HOLY GHOST FATHERS**

Mr. OWENS. Thank you again, Mr. Chairman. I know your staff went to great length to add us onto a schedule which I know has already been very long and full.

I thought that there had been consultation yesterday, and I was told I had 10 minutes. I would like to share them with two people, Father Adrien and Colin Moore. I thought that was an understanding worked out with the staff.

I am here today with representatives and leaders of the Caribbean community from the New York area and particularly from the 12th Congressional District of New York, which is my district.

I am sharing the platform with me, the table with me, Father Antoine Adrien of the Haitian Fathers and attorney Colin A. Moore of the Caribbean Action Lobby. We are here today to share with you our concerns regarding the proposed immigration reform legislation currently before the House Subcommittee on Immigration, Refugees, and International Law, H.R. 1510.

H.R. 1510 is an admirable effort to address immigration concerns facing us today. It attempts to deal with the plight of undocumented workers, to lower the backlog of cases of undocumented individuals, and to mete out punishment to those who would knowingly and cruelly exploit undocumented workers.

Nowhere is there more plainly and cogently a need for immigration reform than in my district, the 12th Congressional District of Brooklyn. Brooklyn has long been the home of many immigrant groups who have landed on the shores of this great Nation.

After the rites of passage, those first few years of adjustment and struggle, most have gone on to contribute to the economic develop-



ment and cultural diversity of the community, the State, and the Nation. They have brought with them tools, skills, education, knowledge, and experience which have greatly enriched our Nation.

While immigrants have landed and settled throughout the nation, Brooklyn has been the home of many immigrant populations. Today, Brooklyn is the heartland of the Caribbean community; more than 250,000 representing the English, Spanish, French, and Dutch-speaking nations of this region now reside in Brooklyn.

Their contribution to America has included such notables as Sidney Poitier, the actor, the poet Claude McKay, the trade unionist A. Philip Randolph, and many, many others. Most of them contribute to the quality of life in America through their earnings, their taxes, their vote, and their support of and belief in America and the opportunities available here.

Despite the known chronicled contributions of our immigrants, and Caribbean immigrants in particular, many Americans stand posed to close the door on our American tradition of welcoming immigrants. They cite as reasons the high unemployment rate, the displacement of the American workers, the drain on social services, and the demise of traditional American culture and way of life.

To this, I respond: Our country always stands to gain from the renewed energies and unleashed creativities brought by immigrant groups. In my district, I have seen that in contrast to the economic malaise found in other communities, the presence of the Caribbean community has brought in new economic resources such as businesses, the renovation of abandoned and decrepit housing, additional cultural resources such as artists, musicians, playwrights, and other social resources.

Thus, the proposed changes in immigration legislation impinge directly upon the livelihood, the civil rights, and the family life of more than 250,000 constituents who live in my district. For these reasons, I am extremely concerned about the bill which is presently before the committee.

In general, I support the concept of immigration reform and applaud the diligence and concern of all past and present members of this body who have brought us to this juncture. However, such reform must take into account principles of constitutionality, humanitarian goals, and fair and equal treatment of the various immigrant groups.

Because of these principles and the concerns of my community, I urge the revision of the bill to include the following provisions:

First, general amnesty for all who are presently here. I am opposed to the two-tier amnesty program which will eliminate many who entered the country after the cut-off date.

Second, elimination of summary exclusion provisions which authorize border officials, not well versed in the complexities of immigration law to make decisions regarding qualifications for entry.

Third, the reinstatement of due process procedures and judicial review which include constitutionally guaranteed rights normally granted to any criminal defendant.

Fourth, elimination of employer sanctions for those who hire undocumented individuals. Sanctions will contribute to the discrimi-



nation against people of different racial, ethnic, and linguistic origin.

Fifth, elimination of a mandatory two-year return to the country of origin before a student may adjust his or her status.

I have summarized briefly the most objectionable features of the present bill.

Attorney Colin Moore will provide an in-depth explanation of my objections to these five features. Following attorney Moore's presentation, with your indulgence, if time permits, Father Adrien will examine the situation of the bill as it relates to Haitians and their needs.

Mr. MAZZOLI. Thank you very much, Mr. Owens.

Mr. Moore, you are recognized.

Mr. MOORE. Mr. Chairman, members of the House Subcommittee on Immigration, I would like first of all to thank you for having extended to my organization this opportunity to testify on the most comprehensive reform of immigration laws in the last 17 years.

The organization which I have the honor to represent, the New York Regional Chapter of the Caribbean Action Lobby, was established to articulate the interests of immigrants from the Caribbean Basin. I understand that ours is the first Caribbean group to testify on this piece of legislation. If that is so, then I am indeed pleased to have established a precedent.

The Caribbean, Mr. Chairman, is an area of strategic importance to the United States. Over 60 percent of America's imports and exports flow through the Panama Canal and the Caribbean Sea. But the disparity in wealth and opportunity between the United States and its southern neighbors has led to a massive movement of people from the Caribbean to the United States. Indeed, that is a current joke in the Caribbean, its most valuable exports are the exports of its people.

Data released by the Immigration and Naturalization Service for the years 1975-77 indicate that next to Mexico, the Caribbean countries constitute the largest source of illegal immigration in the United States.

Data released by the Immigration Service also indicates that the Caribbean Basin represents the largest source of legal immigration to the United States. In 1979, there were 4,490,228 permanent residents registered in the United States. Of this amount, 1,675,603 or approximately 38 percent came from the region of the Caribbean Basin.

Thus, Mr. Chairman, we have a vested interest in this type of legislation which intends and attempts to reform the existing system of legal and illegal immigration. We have looked at the bill, and we commend it as a serious attempt to grapple with a very complex problem, but we have reservation on several issues.

First of all, on the question of legalization, we have endorsed the concept of granting permanent legal status to those who are here for 5 years, but we would suggest that since this bill is intended to be enacted October 1, 1983, we would ask residency status on the date of October 1, 1978, rather than the existing cutoff date of January 1, 1977.

In terms of temporary residency status, we would urge a closer cutoff date of January 1, 1983. The reason why we suggest this, Mr.

Chairman, is that the cutoff date of January 1, 1980, would still leave a large reservoir of deportable aliens in this country. We feel it is beyond the resources of the Immigration Service to cope with this present problem.

In terms of the Haitian refugees, we have very serious concerns, and we would urge, Mr. Chairman, that the nationals of Haiti who are in the United States and subject to exclusion as of October 1, 1983, should be covered within the provisions of temporary residence status.

In terms of employer sanctions, we are opposed to the current procedures for verification as well as for employment sanctions. We feel that these procedures, although well intentioned, will nevertheless have an unintended consequence that is discrimination against foreign legal or foreign special peoples.

We take the position, however, that though we are opposed to the present verification procedures, we would endorse a limited system of employment eligibility based upon the social security number which is rapidly becoming a universal form of identification.

Although we are opposed to the system of civil penalties, we would nevertheless support increased appropriations to the Immigration Service to enforce immigration and labor laws.

Although we are opposed to the concept of national identification system, we would support the continued monitoring of the existing system to determine whether a more secure system is desirable or necessary.

In terms of summary exclusion, we note that your protections, your proposals for the protections, of the alien are more advanced than the Senate version. But there is one feature about the bill which troubles us. That is the immigration offices would have a right to exclude an alien at the port of entry subject to the alien requesting a redetermination.

As we pointed out in the paper, Mr. Chairman, the initial confrontation between an alien and an immigration officer is a very coercive and intimidating experience. We feel if aliens are given the right of requesting a redetermination hearing, most of them who are foreign-speaking in any event would involuntarily waive this right.

We would, therefore, request there be a right, a total and unalienable right, to a hearing for all aliens.

In terms of judicial review, we have one or two very slight amendments. We would request the initial period of 6 months which is in the existing bill be reinstated instead of the abbreviated period of 30 days.

We would also request that in asylum, the total right of judicial review should be given in asylum cases, and there should be a uniform standard of judicial review for exclusion and deportation as well as asylum cases.

In terms of labor certification, we support the existing system of individual labor certification. We feel the blanket system as proposed in the bill would lead to too many bureaucratic delays since it would be based on nationwide rather than individual surveys.

In terms of adjustment of status for nonimmigrants, we will support the existing system which permits nonimmigrants to adjust



status even though they might be out of status. Because we feel that there is a large pool of other-status students as well as visitors would be excluded by this provision.

Mr. Chairman, as I said, we feel it is imbalanced. It is a good bill. However, we have concern in these areas.

In conclusion, I would like to quote to you, Mr. Chairman, if I may, from a poet that once expressed the sentiments of the American people toward her immigrants in 1890.

Emma Lazarus, a Jewish immigrant, wrote words that became inscribed at the base of the Statue of Liberty. It said:

Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, tempest-tost to me,  
I lift my lamp beside the golden door.

Recently, there has been a hostile reaction to immigrants, especially to Haitian refugees coming to this country, and an attempt to close the door in their faces.

An immigrant bill, we feel, should reflect a delicate compromise between a policy of deterring illegal immigration and the maintenance of American historic policy of open doors. We are concerned that in our haste to close the back doors of illegal immigration, we may inadvertently close the front doors of legal immigration.

I sincerely hope this bill with appropriate amendments would put an end to these concerns.

Mr. MAZZOLI. Thank you very much, Mr. Moore. Let me congratulate you and Mr. Owens—and I will let Father speak, too—on trying to compress in a very, very few moments what has been a lifetime of activity for you. I thank you for your help.

Mr. HALL. Mr. Chairman, may I be recognized for 1 minute?

Mr. MAZZOLI. Certainly.

Mr. HALL. I have to chair a subcommittee starting at 9:30. I do not want to leave without recognizing a fellow Texan who is in the audience today, Morris Harrell from Dallas, Tex., who is the president of the American Bar Association.

We are very happy, Mr. Harrell, to have you with us.

I yield back the balance of my time.

Mr. MAZZOLI. Thank you very much, Sam.

Father, you have made the long trek in from New York; we would like to hear from you. If you think 5 minutes would be sufficient, we would certainly like to hear your remarks.

Father ADRIEN. Thank you, Mr. Chairman.

My name is Antoine Adrien. I am a Roman Catholic Priest from the congregation of the Holy Ghost working with the Haitian Apostolate of the Diocese of Brooklyn. I am also the chairman of CIRH (the Inter-Regional Council For Haitian Refugees). Today, I am here in the capacity as representative of the Haitian community as a whole whose various organizations are also present through some of their own representatives.

The Haitian community is in general agreement with the position paper on the Simpson-Mazzoli bill presented by the Caribbean Action Lobby, and we endorse all five amendments that will make the bill a comprehensive immigration legislation. However, we Hai-

tians have a unique experience that enables us to speak out, loud and clear, on certain specific changes we are advocating.

A true, general amnesty cannot exist, for example, with a cutoff date that is earlier to the day of the presentation of the bill. Our experience as Haitians has been, Mr. Chairman, one of frustration and suffering caused by improper actions taken by the INS in its dealings with the Haitian boat people.

We have been singled out and kept in jails in concentration-camplike conditions, without any possibility of release, under the pretext that Haitians would abscond if let free. Since Judge Spellman's decisions asking for the release of some 1,900 Haitian boat people detained for 14 months by the INS, the contrary happened to be true: 99 percent of those released kept their pledge to appear for hearings.

Is it possible, Mr. Chairman, that any legislative action could envision to send back to Haiti those 1,900 after the agony they have been through only because they arrived after January 1, 1980?

We Haitians have been victimized by ill-conceived administrative decisions that ignored reality. For example, the Carter administration's so-called "Cuban/Haitian Entrant Status" with an arbitrary cutoff date of October 10, 1980, has left in total limbo some 15- to 20,000-Haitian boat people known as the "post-October 10, 1980 Haitian refugees."

Judge Spellman's decision covers only those jailed under the Reagan administration order of July 1981. If for simple reason of decency, the 1,900 Spellman's cases cannot be sent back as a group, on what grounds is the Simpson-Mazzoli bill going to shut the door for the "post-October 10, 1980 Haitian refugees?"

Furthermore, we Haitians have been victimized by a restrictive interpretation of the United Nations' definition of a refugee. Under the pretext that the Haitian boat people were unlike the Vietnamese or the Cubans—economic refugees and not political refugees, the INS has been for years throwing Haitian refugees in jail or setting high bonds for their release.

The double standard that characterizes the INS treatment of refugees has been put in its true perspective by the statement of U.S. foreign policy made by Mrs. Jean Kirkpatrick, U.S. Representative to the United Nations, distinguishing between authoritarian governments and totalitarian governments—the former being the right-wing dictatorships friendly to the United States.; the latter being the Communist countries hostile to the United States.

Because the government of Haiti is supported by the United States, Haitian boat people cannot be, from the INS viewpoint, genuine bonafide refugees, no matter how compelling is the evidence of political conditions in Haiti as the push factor in the exodus.

In his well-publicized ruling, *Haitian Refugee Center vs. Civiletti*, Judge James Lawrence King emphatically stated that the decision was made among high INS officials to expel Haitians, despite whatever claims to asylum individual Haitians might have.

Only the right to judicial review of INS administrative actions allowed Haitian boat people to avoid summary exclusion and to survive this program offensive to every notion of constitutional due process and to equal protection. (*HRC v. Civiletti*, page 162.)



You will understand, Mr. Chairman, that the Haitian community, coming from this excruciating experience, is afraid to see how severely the present bill restricts the heretofore guaranteed right of all asylum seekers to judicial review of administrative agency action.

This reminds us of that developed by the so-called Harshan and Colmus. The disastrous program did not hesitate to seclude Haitian teenagers from their community and cause them severe psychological traumas, all that because INS refused to accept the Haitian concept of extended family.

If the provision above-mentioned is voted against, then human suffering and dismay will result for our community.

In conclusion, Mr. Chairman, we urge you to amend the Simpson-Mazzoli bill, taking into account the recommendations made by the Caribbean Action Lobby. If you do make the changes, the agony the Haitian community has been through in this country for the past 10 years will not have been totally in vain.

Thank you, Mr. Chairman.

[The complete statements follow:]

MAJOR R. OWENS  
12TH DISTRICT, NEW YORK

Congress of the United States  
House of Representatives  
Washington, D.C. 20515

TESTIMONY PRESENTED BY  
BY CONGRESSMAN MAJOR R. OWENS  
TO THE HOUSE OF REPRESENTATIVES,  
SUB-COMMITTEE ON IMMIGRATION,  
REFUGEES; AND INTERNATIONAL LAW  
ON H.R. 1510  
MARCH 16, 1983  
THE HONORABLE ROMANO MAZZOLI,  
CHAIRMAN

## I. INTRODUCTION

THE PROPOSED IMMIGRATION LAW REVISIONS HAVE BEEN A BIPARTISAN EFFORT OF RESEARCH AND THOUGHT SPANNING SOME TEN YEARS. IT IS AN EFFORT WORTHY OF SERIOUS CONSIDERATION. WE SHOULD THANK THE CHAIRMAN OF THE HOUSE SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW, THE HONORABLE REPRESENTATIVE FROM THE GREAT STATE OF KENTUCKY, MR. ROMANO MAZZOLI, AND THE OTHER DISTINGUISHED GENTLEMEN OF THE COMMITTEE FOR BRINGING FORTH AT THIS TIME SUCH A COMPREHENSIVE AND TIMELY DOCUMENT. THE CHANGING ENVIRONMENT FORCES US TO QUESTION AND ADDRESS PAST ASSUMPTIONS AND PRESENT POLICIES RELATING TO AMERICAN IMMIGRATION LAWS.

THE HISTORY OF AMERICA IS THE HISTORY OF IMMIGRATION. AS OSCAR HANDLIN, THE NOTED HISTORIAN WROTE, "ONCE I THOUGHT TO WRITE A HISTROY OF THE IMMIGRANTS IN AMERICA. THEN I DISCOVERED THAT THE IMMIGRANTS WERE AMERICAN HISTORY."

THIS GREAT NATION WAS FOUNDED, NURTURED, AND DEVELOPED BY IMMIGRANTS FROM ALL OVER THE WORLD. THERE IS NO COUNTRY ON EARTH MORE DIVERSIFIED AND AS CULTURALLY RICH AS THE UNITED STATES.

IMMIGRANTS HAVE BUILT THE RAILROADS, PLOWED THE FIELDS, DEVELOPED NEW TECHNOLOGIES, HELPED TO TAKE US TO THE MOON, AND HAVE CONTRIBUTED TO THE HEALTH AND WELL-BEING OF US ALL. AMONG THE MORE FAMOUS IMMIGRANTS ARE WARNER VON BRAUN, DR. HENRY KISSINGER, ZUBIN MEHTA, AND MANY MANY OTHERS.

NEW YORK, HISTORICALLY, HAS BEEN A PORT OF ENTRY FOR AMERICAN IMMIGRANTS, AND CONTINUES TO ATTRACT THE NEWCOMER. BROOKLYN HAS BEEN THE FIRST HOME OF MANY SUCCESSIVE GROUPS, AND NEARLY EVERY IMMIGRANT IS REPRESENTED IN BROOKLYN -- ITALIAN, RUSSIAN, GERMAN, IRISH, PHILLIPINO, CHINESE, PUERTO RICAN, DOMINICAN, POLISH, ARAB, INDIAN, AND

CARIBBEAN. AND TODAY, BROOKLYN IS THE HEARTLAND OF THE CARIBBEAN COMMUNITY. BROOKLYN HOLDS THE LARGEST CONCENTRATION OF CARIBBEAN PEOPLES OUTSIDE OF THE CARIBBEAN REGION. MORE THAN ONE-QUARTER OF A MILLION PEOPLE OF CARIBBEAN DESCENT RESIDE IN BROOKLYN. ALL OF THE MAJOR LANGUAGE GROUPS FOUND IN THE CARIBBEAN -- ENGLISH, FRENCH, SPANISH, DUTCH -- ARE FOUND IN BROOKLYN.

THE CARIBBEAN COMMUNITY IS NO DIFFERENT FROM OTHER PAST AND PRESENT IMMIGRANT GROUPS. IT TOO HAS CONTRIBUTED ECONOMICALLY, SOCIALLY, POLITICALLY, AND CULTURALLY TO THE NEIGHBORHOODS, THE STATES, AND THE NATION. IN MY DISTRICT THE CARIBBEAN POPULATION HAS HELPED TO REVITALIZE BROOKLYN THROUGH ITS DAILY ACTIVITIES -- BY STARTING BUSINESSES; BY WORKING AS HEALTH CARE AND EDUCATIONAL PROFESSIONALS, THEY HAVE PROVIDED SERVICES TO THE COMMUNITY; BY THEIR PURCHASE AND RENOVATION OF HOMES AND OFFICES, THEY HAVE AIDED IN THE REDEVELOPMENT OF SECTIONS OF MY DISTRICT: THROUGH THEIR INCOMES THEY HAVE GENERATED NEW COMMERCIAL ACTIVITIES; AND, BY THEIR COMMUNITY INVOLVEMENT, THEY HAVE IMPROVED THE QUALITY OF BROOKLYN LIFE. THESE HAVE BEEN THE BENEFITS GIVEN TO US BY THE COMMON MAN AND WOMAN. STUDIES OF THE CARIBBEAN FAMILY CONCLUDE THAT CARIBBEAN PARENTS INSTILL IN THEIR CHILDREN A STRONG COMMITMENT TO EDUCATION, TO WORK, AND TO COMMUNITY SERVICE. THE HONORABLE DANIEL P. MOYNIHAN STATED IN HIS BOOK, BEYOND THE MELTING POT, THAT CARIBBEAN IMMIGRANTS ARE GEARED TOWARD THE PROFESSIONS. NOWHERE IS MORE EVIDENT THAN IN BROOKLYN.

THE IMMIGRANTS AND THE CHILDREN OF CARIBBEAN IMMIGRANTS HAVE MADE ARTISTIC, ECONOMIC, POLITICAL, CULTURAL, AND TECHNOLOGICAL CONTRIBUTIONS TO OUR NATION. WHEN ONE THINKS OF THE CARIBBEAN CONTRIBUTION TO AMERICA, ONE THINKS OF: THE POET CLAUDE MCKAY, THE NOVELIST PAULE MARSHALL, THE HONORABLE MERVYN DYMALLY, AND THE DISCOVERER OF CHICAGO, POINT DU SABLE.



## II. ARGUMENTS FOR LIMITING IMMIGRATION

IN SPITE OF THE MAJOR CONTRIBUTIONS MADE BY OUR IMMIGRANTS, AMERICANS IN TIMES OF ECONOMIC DISTRESS AND RAPID SOCIAL CHANGE, BEGIN TO QUESTION THE VALUE OF EXISTING IMMIGRATION POLICIES. I WOULD LIKE TO CORRECT THE MYTHS THAT ARE PRESENTLY BEING GENERATED AS THE JUSTIFICATION FOR AMENDING IMMIGRATION POLICY AND RESTRICTING FURTHER IMMIGRATION. THESE MYTHS INCLUDE:

MYTH ONE: IMMIGRANTS TAKE JOBS AWAY FROM AMERICAN WORKERS. THIS ARGUMENT FAILS TO TAKE ACCOUNT OF THE FACT THAT THESE JOBS TEND TO BE LOW-PAYING, LOW-STATUS, AND SHUNNED BY AMERICANS. AS THE FAILURE OF THE UNITED STATES IMMIGRATION AND NATURALIZATION SERVICE'S "PROJECT JOBS" SHOWED, WITHIN A SHORT DURATION, AMERICANS WHO HAD TAKEN JOBS FORMERLY HELD BY UNDOCUMENTED WORKERS ABANDONED THESE JOBS; AND CONSEQUENTLY, EMPLOYERS ONCE AGAIN FILLED THESE POSITIONS WITH UNDOCUMENTED WORKERS.

SECONDLY, ELIMINATING IMMIGRANT LABOR AS ONE SOURCE OF CHEAP LABOR, DOES NOT NECESSARILY COMPEL EMPLOYERS TO RAISE WAGES TO MAKE THESE POSITIONS SUFFICIENTLY ATTRACTIVE TO AMERICAN WORKERS. RATHER, EMPLOYERS ARE JUST AS LIKELY TO DISMANTLE AMERICAN FACTORIES AND INDUSTRIES, MOVING THEM TO AREAS WHERE BASIC WORKERS' RIGHTS SUCH AS MINIMUM WAGE, DECENT HEALTH STANDARDS, AND THE RIGHT TO UNIONIZE ARE VIRTUALLY NONEXISTANT. BY SUCH MOVES, EVEN MORE AMERICAN WORKERS ARE LEFT WITHOUT EMPLOYMENT.

THIRDLY, MANY IMMIGRANTS BECOME EMPLOYERS, AND ARE THUS THE SOURCE OF JOB OPPORTUNITIES FOR AMERICANS. IN BROOKLYN, THE ESTABLISHMENT OF IMMIGRANT SMALL BUSINESSES PROVIDE SELF-EMPLOYMENT FOR IMMIGRANT FAMILIES AND JOBS FOR AMERICANS.

MYTH TWO: IMMIGRANTS ARE BY AND LARGE UNSKILLED AND UNEDUCATED. IN THE BROOKLYN COMMUNITY, THE CARIBBEAN CONTRIBUTION HAS BEEN ON THE SIDE OF

PROFESSIONAL AND SKILLED TRADES: FOR EXAMPLE, HOSPITALS IN GREATER NEW YORK ARE STAFFED BY MANY MEDICAL PROFESSIONALS EDUCATED AND TRAINED IN THE CARIBBEAN. AT HOWARD UNIVERSITY, THE MOST PRESTIGIOUS BLACK UNIVERSITY, ALMOST ALL OF THE DEPARTMENT HEADS ARE OF CARIBBEAN DESCENT. FINALLY, IN NEW YORK CITY DURING THE 1970s, ALL BLACK JUDGES AND HIGH-RANKING POLICE OFFICIALS WERE ALSO OF CARIBBEAN DESCENT.

EVEN THOUGH SOME CARIBBEAN IMMIGRANTS OF ARRIVE WITHOUT HIGH LEVEL SKILLS, THEY QUICKLY AVAIL THEMSELVES OF EDUCATIONAL OPPORTUNITIES WITHIN THE EDUCATIONAL SYSTEM. HIGH CONCENTRATIONS OF CARIBBEAN PEOPLES HAVE MATRICULATED WITHIN THE CITY UNIVERSITY OF NEW YORK (CUNY).

THE IMMIGRATION ACT OF 1965 GAVE A PREFERENCE TO SKILLED AND PROFESSIONALLY-TRAINED IMMIGRANTS. THROUGH THEIR EDUCATIONAL TRAINING AND ADVANCEMENT, AMERICA HAS BENEFITTED FROM THE CARIBBEAN QUEST FOR KNOWLEDGE AND TRAINING.

MYTH THREE: IMMIGRANTS ARE A DRAIN ON SOCIAL SERVICES AND ARE THUS A HIGH COST TO THE AMERICAN TAXPAYER. IN A STUDY DONE BY NORTH AND HOUSTON, UNDOCUMENTED WORKERS DO NOT AVAIL THEMSELVES OF WELFARE BENEFITS, FOOD STAMPS, AND UNEMPLOYMENT INSURANCE.

IN NEW YORK, STATISTICS FROM THE DEPARTMENT OF SOCIAL SERVICES CONFIRM THIS DATA. CARIBBEAN IMMIGRANTS HAVE A WELL DEFINED NOTION OF THE WORK ETHIC AND TEND NOT TO ACCEPT UNEMPLOYMENT AND/OR WELFARE BENEFITS.

IN ANOTHER STUDY DONE BY NORTH ON THE DEMAND OF SOCIAL SERVICES BY IMMIGRANT GROUPS, IT WAS FOUND THAT THE AGE DISTRIBUTION OF HAITIAN UNDOCUMENTED PERSONS WAS OVERWHELMINGLY IN THE YOUNG, WORKING-AGE GROUP; SOME 57% OF UNDOCUMENTED HAITIANS ARE BETWEEN THE AGES OF 18 AND 30. BECAUSE OF THEIR AGE DISTRIBUTION, HAITIANS PLACE A LOWER DEMAND ON THE PUBLIC SCHOOL SYSTEMS, AS ONLY 8.7% OF ALL HAITIAN IMMIGRANTS ARE

OF SCHOOL AGE.

SECONDLY, THE PERCENTAGE OF ELDERLY HAITIANS IS QUITE LOW COMPARED TO OTHER IMMIGRANT GROUPS WHICH REDUCES THEIR USE OF SOCIAL SECURITY PROGRAMS WHICH ARE, IN NORTH'S FINDINGS, SHOWING THAT .06% OF ALL HAITIANS RECEIVE SOCIAL SECURITY BENEFITS COMPARED TO 1.9% OF THE GENERAL POPULATION.

THUS, THE HAITIANS POPULATION IS PREDOMINANTLY YOUNG, ABLE-BODIED, AND IN THE PRIME OF THEIR WORKING YEARS. BY THEIR LOW PARTICIPATION IN THE SOCIAL SERVICES AREAS, AND THEIR HIGH PARTICIPATION IN THE EMPLOYMENT SECTORS, AMERICA GAINS FAR MORE THAN IT PAYS OUT TO THE CARIBBEAN COMMUNITY.

MYTH FOUR: THE HAITIAN REFUGEE DOES NOT FACE ANY WELL-FOUNDED FEAR OF BEING PERSECUTED OR MISTREATED UPON RETURN TO HAITI. ACCORDING TO THE LAWYER'S COMMITTEE FOR INTERNATIONAL HUMAN RIGHTS, TO THE CONTRARY, RETURNEES ARE OFTEN IMPRISONED, BEATEN, AND TORTURED. THIS REPORT PROVIDES ACCOUNTS OF THE TREATMENT RECEIVED BY RETURNEES. IN GRAPHIC DETAIL, MALE RETURNEES TOLD OF RECEIVING SEVERE BEATINGS IN FRONT OF WOMEN AND CHILDREN. THE DUVALIER REGIME VIEWS RETURNEES AS POLITICAL OPPONENTS AND THUS, THEY ARE SUBJECT TO BRUTALITIES COMMONLY RECEIVED BY TRAITORS OF THE REGIME.

THESE FOUR MYTHS ARE REFLECTED IN THE CURRENT CALL FOR IMMIGRATION REFORM. WHILE THE CALL FOR REFORM IS NEEDED AND DESIRED, IT MUST BE BASED ON REALITIES AND NOT MYTHS, ASSUMPTIONS, AND PREJUDICES. TO ENACT SUCH LEGISLATION IS TO RISK JEOPARDIZING THE WORTHWHILE PORTIONS OF EXISTING IMMIGRATION LEGISLATION AS WELL AS NOT PROVIDING VIABLE SOLUTIONS TO OUR IMMIGRATION CONCERNS.

### III. STRENGTHS OF THE BILL

TO MY MIND THE BILL IS COMMENDABLE FOR:

- 1) ATTEMPTING TO ELIMINATE THE BACKLOG OF CASES AND RESOLVING THE UNCERTAINTY OF MANY APPLICANTS,
  - 2) DEALING WITH THE UNDOCUMENTED STATUS OF MANY THROUGH THE INTRODUCTION OF THE PROCESS OF LEGALIZATION,
  - 3) MINIMIZING THE EXPLOITATION OF UNDOCUMENTED AND IMMIGRANT WORKERS, AND
  - 4) PROTECTING EXISTING FEATURES OF THE FAMILY REUNIFICATION POLICY.
- IV. SHORTCOMINGS OF THE BILL

HOWEVER, H.R. 1510 IN ITS EFFORT TO BE COMPREHENSIVE AND FARREACHING GOES TOO FAR IN SOME AREAS AND NOT FAR ENOUGH IN OTHERS. THEREFORE, I FIND THE FOLLOWING PROPOSED POLICY CHANGES TO BE OBJECTIONABLE AND HARMFUL TO THE WELL-BEING OF MY CONSTITUENCY:

1. GENERAL AMNESTY THE AMNESTY BEING PROPOSED IS INCOMPLETE AND FALLS SHORT OF MEETING THE NEEDS OF MY CONSTITUENCY. THE TWO-TIER AMNESTY CATEGORIES DISCRIMINATE. THOSE WHO ENTERED THE UNITED STATES BEFORE JANUARY 1, 1977 WOULD HAVE A CLEAR RESOLUTION OF THEIR STATUS, WHILE THOSE WHO ENTERED AFTERWARDS FIND THAT UNCERTAINTY OF THEIR STATUS REMAINS. MANY CARIBBEAN IMMIGRANTS IN MY DISTRICT WILL FIND THAT THEY FALL INTO THE TENUOUS SECOND CATEGORY OF IMMIGRANTS.

IN ADDITION, THE SECOND GROUP IS NOT ENTITLED TO ANY BENEFITS, OTHER THAN EMERGENCY MEDICAL CARE, FOR TWICE THE LENGTH OF TIME THAT PERMANENT RESIDENTS ARE INELIGIBLE.

FINALLY, THERE IS NO GUARANTEE THAT AFTER THE SPECIFIED WAITING PERIOD A CHANGE IN STATUS TO PERMANENT RESIDENT WOULD BE FORTHCOMING.

2. DUE PROCESS DEPORTEES AND EXCLUDEES ARE NOT EXTENDED THE SAME CONSTITUTIONAL PRIVILEGES GUARANTEED TO ANY CRIMINAL DEFENDENT. ARRESTED PERSONS HAVE NOT ALWAYS BEEN ADVISED OF THEIR CONSTITUTIONAL RIGHTS, DO NOT ALWAYS HAVE THE RIGHT TO COUNSEL AND THE AVAILABILITY OF COMPETENT



INTERPRETORS, AND ARE NOT ENTITLED TO EQUITABLE BOND AND BAIL SYSTEMS ESTABLISHED FOR CRIMINAL DEFENDENTS.

SECONDLY, THE CONTRACTION OF THE TIME FOR FILING AN APPEAL GRANTED TO PERSONS SUBJECT TO DEPORTATION AND EXCLUSION FROM SIX MONTHS TO 30 DAYS PLACES UNDUE HARDSHIP ON THEM, REDUCES THE QUALITY OF PREPARATION OF THEIR LEGAL PRESENTATIONS, AND MAY JEOPARDIZE A JUST OUTCOME OF THEIR CASES.

FINALLY, PROPOSED RESTRICTIONS OF IMMIGRATION JUDICIAL REVIEW IN ASYLUM CASES ELIMINATES AMERICAN GUARANTEES OF CONSTITUTIONAL PROTECTION. TO WATER DOWN THESE PROTECTIONS ERASES OUR CAREFULLY CONSTRUCTED SYSTEM OF CHECKS AND BALANCES, AND JEOPARDIZES THE LIVES OF THOSE SEEKING ASYLUM IN THE UNITED STATES.

3. SUMMARY EXCLUSION IT WOULD BE A TRAVESTY OF JUSTICE FOR PERSONS WITHOUT A KNOWLEDGE OF THE COMPLEXITIES OF IMMIGRATION LAW TO HAVE WIDE DISCRETION OVER ASYLUM SEEKERS. ASYLUM SEEKERS WITH VALID REASONS FOR ENTRY, BUT WITHOUT ADEQUATE LEGAL ASSISTANCE, COULD BE SUMMARILY EXCLUDED FROM AMERICA AND RETURNED TO THEIR OWN COUNTRIES TO FACE IMPRISONMENT, TORTURE, AND EVEN DEATH. IN SUCH CASES, THE UNITED STATES WOULD NOT LIVE UP TO ITS OBLIGATION OF NONREFOULEMENT OF REFUGEES UNDER ARTICLE 33 OF THE UNITED NATIONS CONVENTION ON THE STATUS OF REFUGEES.

4. EMPLOYER SANCTIONS ALTHOUGH THE IDEA OF REDUCING EXPLOITATION OF IMMIGRANTS AND UNDOCUMENTED WORKERS THROUGH EMPLOYER FINES IS ADMIRABLE, THE POSSIBILITIES OF DISCRIMINATION CONTINUE TO EXIST AND FALL HEAVIEST UPON RACIALLY, ETHNICALLY, AND LINGUISTICALLY VISIBLE GROUPS SUCH AS THE CARIBBEAN COMMUNITY. NOTWITHSTANDING THE FACT THAT MY HONORABLE COLLEAGUE, MR. MAZZOLI, HAS INDICATED HIS CONCERN THAT MINORITIES MAY BE INADVERTENTLY DISCRIMINATED AGAINST, THERE EXISTS NO FORCEFUL MECHANISM TO ADVERT THE VERY DISCRIMINATION THAT HE CLAIMS WILL NOT OCCUR. NO

ADEQUATE MEANS OF REDRESS EXIST FOR THE IMMIGRANT WHO MAY BE FEARFUL OF CHALLENGING SUCH DISCRIMINATION AND LACKS THE RESOURCES TO DO SO. IN PARTICULAR, TEMPORARY RESIDENTS MAY FEAR MOUNTING ANY CHALLENGE TO DISCRIMINATION RECEIVED FROM EMPLOYERS OUT OF A BELIEF THAT TO DO SO WILL JEOPARDIZE THEIR FUTURE ADJUSTMENT OF STATUS.

THE FUTURE NATIONAL IDENTIFICATION CARD SYSTEM WILL BE SUBJECT TO MISUSE AND ABUSE. THE SYSTEM WILL NOT BE FAILPROOF AND THE DEVELOPMENT OF AN UNDERGROUND COUNTERFEIT MARKET IN IDENTITY CARDS WILL APPEAR.

THIRD, THE COST TO EMPLOYERS OF RECORD-KEEPING WILL FALL HEAVIEST ON SMALL BUSINESSES, THE MOST LABOR-INTENSIVE ENTERPRISES. SMALL BUSINESSES ARE LEAST ABLE TO BEAR THE ADDITIONAL COSTS, TIME AND LABOR DEMANDED BY THE RECORD-KEEPING REQUIREMENT.

FINALLY, I JOIN WITH THE CIVIL LIBERTARIANS IN POINTING OUT THAT SUCH A SYSTEM OF IDENTIFICATION IMPINGES UPON THE PRIVACY OF THE INDIVIDUAL AND THREATENS TO TAKE AWAY OUR BASIC CIVIL RIGHTS.

5. ADJUSTMENT OF STATUS OF STUDENTS THE REQUIREMENT THAT STUDENTS RETURN HOME FOR TWO YEARS TO COMPLETE A RESIDENCY REQUIREMENT IN ORDER TO ADJUST THEIR STATUS WILL CREATE DISLOCATIONS IN FAMILY LIFE AND CAREER DEVELOPMENT.

THIS REQUIREMENT MAKES NO PROVISIONS FOR THE STUDENT WHOSE COUNTRY OF ORIGIN IS UNDERGOING TREMENDOUS SOCIAL AND POLITICAL UPHEAVAL AND IS IN FEAR OF RETURNING HOME.

#### V. RECOMMENDATIONS

IN SUM, THESE CHANGES WILL IMPACT NEGATIVELY UPON THE CARIBBEAN COMMUNITY IN BROOKLYN. I SUPPORT THE PRINCIPLE OF IMMIGRATION REFORM, BUT CANNOT, WITH CLEAR CONSCIENCE, VOTE FOR A BILL THAT DOES NOT INCLUDE THE FOLLOWING POLITICAL, ECONOMIC, AND HUMANITARIAN CONSIDERATIONS:

1. HUMANITARIAN

- A) GENERAL AMNESTY FOR EVERYONE WHO IS HERE AS OF FEBRUARY 17, 1983
- B) THE ELIMINATION OF THE TWO-TIER CLASSIFICATION OF IMMIGRANTS,
- C) THE GRANTING OF SOCIAL AND WELFARE BENEFITS TO ALL WITHOUT DISCRIMINATION BASED UPON ENTRY DATE,
- D) THE MAINTENANCE OF EXISTING STATUTES ON THE ADJUSTMENT OF STATUS FOR FOREIGN STUDENTS, AND
- E) FAIR AND EQUAL TREATMENT FOR HAITIAN REFUGEES.

2. ECONOMIC

- A) THE ELIMINATION OF EMPLOYER SANCTIONS.

3. POLITICAL

NO SUMMARY EXCLUSION PROVISIONS WITHOUT A GUARANTEE OF JUDICIAL REVIEW, A RIGHT TO A FAIR HEARING BY AN INDEPENDENT BODY OF LEGAL REVIEWERS IN EXCLUSION, DEPORTATION AND ASYLUM CASES WHICH INCLUDES: THE SIX MONTHS ALLOWED FOR PREPARATION OF LEGAL CASES OF DEFENDENTS, REASONABLE BAIL AND BOND, THE GUARANTEE OF CONSTITUTIONAL RIGHTS OF DUE PROCESS AFFORDED TO ALL CITIZENS, AND ACCESS TO COMPETENT INTERPRETORS AND LEGAL COUNSEL.

## VI. CONCLUSION

AN IMMIGRANT REFORM BILL SHOULD TAKE INTO CONSIDERATION THE ECONOMIC NEEDS OF THE NATION, BUT CANNOT SERVE AS THE SOLUTION TO SHORT-TERM ECONOMIC DISTRESS, NOR SHOULD IMMIGRATION REFORM BECOME THE TOOL OR SCAPEGOAT OF SUCH DISTRESS. IMMIGRANTS HAVE LONG CONTRIBUTED TO THE ECONOMIC GROWTH AND DEVELOPMENT OF THIS COUNTRY, EVEN IN TIMES OF ECONOMIC RECESSIONS, AND WILL CONTINUE TO DO SO. TO TURN AWAY VALUABLE, PRODUCTIVE HUMAN BEINGS WHO CAN PARTICIPATE IN OUR COUNTRY, RISKS SLOWING DOWN THE RECOVERY OF THE U.S. ECONOMY. MIXING IMMIGRATION REFORM WITH A HIDDEN AGENDA ON EMPLOYMENT WILL ULTIMATELY FAIL, BECAUSE

JOBS ARE NOT CREATED BY IMMIGRANTS ALONE, NOR ARE THEY REMOVED BY THOSE IMMIGRANTS ALONE.

IMMIGRATION REFORM SHOULD TAKE INTO ACCOUNT THE STATED HUMANITARIAN GOALS OF THE NATION. IN LIGHT OF THE DOCUMENTED PERSECUTION OF PERSONS FROM THE CARIBBEAN, IT IS UNFAIR AND INHUMANE TO SELECTIVELY OFFER ASYLUM. THE CRITERIA FOR ASYLUM SHOULD BE BASED ON OBJECTIVE CONDITIONS RATHER THAN FOREIGN POLICY AND POLITICAL JUDGEMENTS.

FINALLY, IMMIGRATION REFORM SHOULD TAKE INTO CONSIDERATION THE INTERNATIONAL IMPLICATIONS OF THESE POLICY CHANGES. AMERICA'S IMAGE ABROAD AND ITS RELATIONS TO OTHER COUNTRIES MAY BE ADVERSELY AFFECTED. TO PROCLAIM ITSELF DEMOCRATIC, TO GUARANTEE BASIC CONSTITUTIONAL RIGHTS TO SOME, WHILE AT THE SAME TIME WITHDRAWING CONSTITUTIONALLY GUARANTEED RIGHTS OF JUDICIAL REVIEW AND DUE PROCESS FROM OTHERS IS HYPOCRITICAL AND UNDEMOCRATIC.



T E S T I M O N Y

OF

COLIN A. MOORE

PRESIDENT OF THE NEW YORK CHAPTER

OF THE

CARIBBEAN ACTION LOBBY

(CAL)

BEFORE

THE HOUSE SUB COMMITTEE ON IMMIGRATION

March 16, 1983

MR. CHAIRMAN, MEMBERS OF THE HOUSE SUBCOMMITTEE ON IMMIGRATION, I WOULD LIKE TO THANK YOU FOR HAVING EXTENDED TO MY ORGANIZATION THIS OPPORTUNITY TO TESTIFY ON THE MOST COMPREHENSIVE REFORM OF THE IMMIGRATION LAWS IN THE LAST SEVENTEEN YEARS. THE ORGANIZATION WHICH I HAVE THE HONOR TO REPRESENT, THE NEW YORK REGIONAL CHAPTER OF THE CARIBBEAN ACTION LOBBY, WAS ESTABLISHED TO ARTICULATE THE INTEREST OF IMMIGRANTS FROM THE CARIBBEAN BASIN. THIS VAST ARCHIPELAGO OF ISLANDS AND LITTORAL TERRITORIES WHICH STRETCHES FROM THE BAHAMAS IN THE NORTH TO GUYANA IN THE SOUTH REPRESENTS AMERICA'S THIRD FRONTIER. IT IS AN AREA OF STRATEGIC IMPORTANCE TO THE UNITED STATES. OVER 60% OF AMERICA'S IMPORTS AND EXPORTS FLOW THROUGH THE PANAMA CANAL AND THE CARIBBEAN SEA. BUT THE DISPARITY IN WEALTH AND OPPORTUNITY BETWEEN THE U.S. AND ITS SOUTHERN NEIGHBORS HAS LED TO A MASSIVE MOVEMENT OF PEOPLE FROM THE CARIBBEAN TO THE UNITED STATES. DATA RELEASED BY THE IMMIGRATION AND NATURALIZATION SERVICE FOR THE YEARS 1975-77 INDICATE THAT, NEXT TO MEXICO, THE CARIBBEAN COUNTRIES CONSTITUTE THE LARGEST SOURCE OF ILLEGAL IMMIGRATION IN THE UNITED STATES. MEXICO RANKS FIRST, FOLLOWED BY EL SALVADOR, GUATEMALA, DOMINICAN REPUBLIC, JAMAICA, HONDURAS, TRINIDAD & TOBAGO, HAITI, COSTA RICA, NICARAGUA, BAHAMAS, GUYANA AND ANTIGUA. DATA RELEASED BY THE INS ALSO INDICATES THAT THE CARIBBEAN BASIN REPRESENTS THE LARGEST SOURCE OF LEGAL IMMIGRATION TO THE UNITED STATES. IN 1979, THERE WERE

4,490,0228 PERMANENT RESIDENTS REGISTERED IN THE UNITED STATES. OUT OF THIS AMOUNT, 1,675,603 OR APPROXIMATELY 38%, CAME FROM THE REGION OF THE CARIBBEAN BASIN. THUS, MR. CHAIRMAN, YOU WILL CONCEDE THAT, BASED ON THE STATISTICS PRESENTED, THE PEOPLE OF THE CARIBBEAN BASIN HAVE A VITAL INTEREST IN ANY LEGISLATIVE PROPOSALS THAT ATTEMPT TO REFORM THE EXISTING SYSTEM OF LEGAL AND ILLEGAL IMMIGRATION IN THE UNITED STATES.

MR. CHAIRMAN, IN YOUR INTRODUCTORY REMARKS BEFORE THE HOUSE ON FEBRUARY 17, 1983, YOU INDICATED THAT THE BASIC RATIONALE OF THE BILL WAS TO STEM THE TIDE OF ILLEGAL IMMIGRATION BY PUTTING AN "END TO THE JOB LURE THAT BRINGS UNDOCUMENTED ALIENS TO THIS COUNTRY." THIS DESIRE TO CURB IMMIGRATION WAS ECHOED IN MORE DRAMATIC TERMS BY YOUR COLLEAGUE ON THE SENATE SIDE, MR. SIMPSON, WHO STATED THAT "OUR PRESENT IMMIGRATION LAWS AND ENFORCEMENT PROCEDURES NO LONGER SERVE THE NATIONAL INTEREST...IMMIGRATION TO THE UNITED STATES IS OUT OF CONTROL." WE FEEL, MR. CHAIRMAN, THAT THIS ATTEMPT BY OUR POLITICAL LEADERS TO PORTRAY THE UNITED STATES AS A CITADEL BESEIGED BY HORDES OF UNDOCUMENTED ALIENS SEIZING JOBS FROM AMERICAN WORKERS, IS TOTALLY AT VARIANCE WITH THE OBJECTIVE FACTS. ALTHOUGH THE NUMBER OF IMMIGRANTS TO THE UNITED STATES HAS INCREASED IN ABSOLUTE TERMS, YET, THE PROPORTION OF FOREIGN BORN CITIZENS IS LOWER THAN AT ANY TIME IN AMERICA'S RECENT HISTORY. IN 1890, THE PERCENTAGE OF FOREIGN BORN RESIDENCE WAS 14.7% OF THE POPULATION. IN 1970, IT WAS

DOWN TO 4.7%. ALTHOUGH THE NUMBER OF UNDOCUMENTED WORKERS HAS BEEN ESTIMATED AT BETWEEN 3.5 MILLION TO 6 MILLION, THESE FIGURES REPRESENTED MERELY EDUCATED GUESSWORK, SINCE THERE IS NO RELIABLE METHOD OF DETERMINING THE PRECISE NUMBER OF ILLEGAL ALIENS. WE SUSPECT THAT THIS EXAGGERATED RESPONSE TO UNDOCUMENTED ALIENS IS BASED ON THE FACT THAT THE IMMIGRANTS OF TODAY ARE MORE VISIBLE THAN THEIR PREDECESSORS OF FIFTY YEARS AGO. WHEREAS THE FORMER IMMIGRANTS WERE WHITES WHO WERE EASILY ASSIMILABLE INTO THE AMERICAN MAINSTREAM, THE PRESENT IMMIGRANTS ARE BROWN, BLACK AND YELLOW. THE ARGUMENT THAT ILLEGAL ALIENS TAKE AWAY JOBS FROM AMERICAN WORKERS IS ALSO WITHOUT FOUNDATION. ECONOMIC STUDIES HAVE REVEALED THAT AMERICA HAS ALWAYS POSSESSED A DUAL LABOR MARKET -- A VISIBLE LABOR SYSTEM BASED ON UNION WAGES AND MODERN WORKING CONDITIONS AND AN UNDERGROUND LABOR WORKING AT SUB-UNION WAGES AND UNDER SWEATSHOP CONDITIONS. ALIENS HAVE TRADITIONALLY PERFORMED FUNCTIONS THAT DOMESTIC WORKERS ARE UNWILLING TO PERFORM. AN END TO ILLEGAL IMMIGRATION WILL NOT NECESSARILY OPEN UP THESE OPPORTUNITIES TO THE DOMESTIC LABOR FORCE, BUT MAY LEAD TO THE DISSOLUTION OF THE MARGINAL BUSINESSES WHICH HAVE SUPPORTED THIS UNDERGROUND ECONOMY. FAR FROM RESTRICTING JOB OPPORTUNITIES, ILLEGAL IMMIGRATION HAS CREATED JOBS WHICH WOULD NOT OTHERWISE HAVE EXISTED UNDER THE PREVAILING CONDITIONS OF HIGH WAGE RATES. IN SPITE OF THE FACT THAT WE DO NOT SUBSCRIBE TO THE PHILOSOPHY UNDERLYING THE BILL,



WE NEVERTHELESS FEEL THAT THIS BILL REPRESENTS THE FIRST SERIOUS ATTEMPT AT COMPREHENSIVE REFORM OF THE IMMIGRATION LAWS IN MANY YEARS. HOWEVER, THERE ARE SEVERAL IMPERFECTIONS IN THE BILL AND WE WOULD RECOMMEND SPECIFIC AMENDMENTS IN THE AREAS OF LEGALIZATION; EMPLOYER SANCTIONS, SUMMARY EXCLUSION, JUDICIAL REVIEW, LABOR CERTIFICATION AND ADJUSTMENT OF STATUS FOR NON-IMMIGRANTS.

# 1. LEGALIZATION - SECTION 301

THE MAZZOLI BILL PROVIDES THAT AN ALIEN WHO ENTERED THE U.S. PRIOR TO JANUARY 1, 1977, AND WHO HAS RESIDED CONTINUOUSLY SINCE, CAN ADJUST TO PERMANENT RESIDENT STATUS. TEMPORARY RESIDENT STATUS IS GRANTED TO ALIENS WHO (1) ENTERED THE U.S. PRIOR TO JANUARY 1, 1980, AND HAVE CONTINUOUSLY RESIDED SINCE (2) NATIONALS OF HAITI WHO WERE THE SUBJECT OF EXCLUSION OR DEPORTATION PROCEEDINGS ON DECEMBER 31, 1980 (3) NATIONALS OF HAITI WHO WERE PAROLED INTO THE U.S. OR WERE GRANTED VOLUNTARY DEPARTURE STATUS BEFORE DECEMBER 31, 1980 (4) NATIONALS OF HAITI WHO HAD AN APPLICATION FOR ASYLUM PENDING ON DECEMBER 31, 1980. ALIENS IN TEMPORARY RESIDENT STATUS WILL NOT BE ELIGIBLE FOR PROGRAM OF FINANCIAL ASSISTANCE FURNISHED UNDER FEDERAL LAW EXCEPT IN CERTAIN EXTREME EMERGENCIES. CAL SUPPORTS THE SPECIFIC PROPOSALS FOR AMNESTY AS IT RELATES TO THOSE APPLYING FOR PERMANENT RESIDENT STATUS. HOWEVER, WE URGE THAT TEMPORARY RESIDENT STATUS BE GRANTED TO (1) THOSE WHO ENTERED THE U.S. PRIOR TO JANUARY 1, 1983, AND HAVE CONTINUOUSLY RESIDED THEREFROM; (2) NATIONALS OF HAITI WHO WERE THE SUBJECT OF EXCLUSION AND

DEPORTATION PROCEEDING ON DECEMBER 31, 1982; (3) NATIONALS OF HAITI WHO WERE PAROLED IN THE U.S. OR WERE GRANTED VOLUNTARY DEPARTURE STATUS BEFORE OCTOBER 1, 1983; (4) NATIONALS OF HAITI WHO HAD AN APPLICATION PENDING ON OCTOBER 1, 1983. ALIENS IN TEMPORARY RESIDENT STATUS SHOULD BE ELIGIBLE FOR ALL FEDERAL, STATE OR LOCAL PROGRAM OF FINANCIAL ASSISTANCE.

## 2. EMPLOYER SANCTIONS - SECTION 101

WE RECOGNIZE THAT A POLICY OF GRANTING AMNESTY TO ILLEGAL ALIENS MUST BE COUNTERBALANCED BY A POLICY OF STRICT ENFORCEMENT OF THE IMMIGRATION LAWS. HOWEVER, THE VERIFICATION SANCTION PROPOSALS ARE UNWORKABLE, OPPRESSIVE AND UNREALISTIC. UNDER THE MAZZOLI BILL, THE EMPLOYER MUST VERIFY THAT EMPLOYEE IS ELIGIBLE FOR EMPLOYMENT BY EXAMINING THE EMPLOYEE'S U.S. PASSPORT OR SOCIAL SECURITY NUMBER AND GREEN CARD OR DRIVER'S LICENSE. AN EMPLOYER WHO FAILS TO MAINTAIN PROPER VERIFICATION PROCEDURES IS FIRST CITED FOR THE VIOLATION AND IF THE VIOLATION CONTINUES, HE IS LIABLE FOR A CIVIL PENALTY OF \$500. AN EMPLOYER WHO HIRES AN UNAUTHORIZED ALIEN, WITH KNOWLEDGE OF HIS STATUS, IS FIRST CITED FOR A VIOLATION AND IF THE VIOLATION CONTINUES, HE IS LIABLE FOR CIVIL PENALTIES OF \$1,000, \$2,000, \$3,000 AND AN INJUNCTION. WITHIN THREE YEARS AFTER ENACTMENT OF THE BILL, THE PRESIDENT IS AUTHORIZED TO ESTABLISH A SECURE SYSTEM TO DETERMINE EMPLOYER ELIGIBILITY.

THE VERIFICATION PROPOSALS WILL IMPOSE A FINANCIAL BURDEN

UPON SMALL BUSINESSES, AND WILL REQUIRE A MASSIVE ENFORCEMENT MECHANISM FROM THE INS. THE SYSTEM OF EMPLOYER SANCTION WILL LEAD TO DISCRIMINATION AGAINST FOREIGN "LOOKING" OR "FOREIGN SPEAKING" EMPLOYEES. THE SECURE SYSTEM TO BE IMPLEMENTED BY THE PRESIDENT CREATES FEAR OF AN INTERNAL PASSPORT. CAL IS STRONGLY OPPOSED TO THE PROPOSED VERIFICATION PROCEDURES BUT WOULD ENDORSE A LIMITED SYSTEM OF EMPLOYMENT ELIGIBILITY BASED UPON THE SOCIAL SECURITY NUMBER. CAL IS OPPOSED TO THE PROPOSED SYSTEM OF CIVIL PENALTIES, BUT WOULD SUPPORT INCREASED APPROPRIATIONS TO ENFORCE THE IMMIGRATION AND LABOR LAWS. CAL IS OPPOSED TO THE CONCEPT OF THE NATIONAL IDENTIFICATION SYSTEM BUT WOULD SUPPORT THE CONTINUED MONITORING OF THE EXISTING SYSTEM TO DETERMINE WHETHER A MORE SECURE SYSTEM IS DESIRABLE OR NECESSARY.

### 3. SUMMARY EXCLUSION - SECTION 121

SECTION 121 OF THE MAZZOLI BILL, LIKE SECTION 235(b) OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C 1225) WOULD PERMIT SUMMARY EXCLUSION OF ALIENS WHO DO NOT HAVE A REASONABLE BASIS FOR LEGAL ENTRY INTO THE U.S. HOWEVER, IF THE ALIENS REQUESTS A REDETERMINATION BY AN ADMINISTRATIVE LAW JUDGE, AFTER BEING INFORMED OF HIS RIGHT TO A HEARING, THE ALIEN WOULD HAVE A RIGHT TO A HEARING. SIMILARLY, IF THERE IS A DOUBT ABOUT THE ALIEN'S BASIS FOR ENTRY, THE ALIEN IS ENTITLED TO A HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. THE MAZZOLI BILL REPRESENTS AN IMPROVEMENT OVER THE EXISTING PROCEDURES WHICH PERMITS SUMMARY

EXCLUSION BY IMMIGRATION OFFICERS AT PORTS OF ENTRY WITH A LIMITED RIGHT OF ADMINISTRATIVE APPEAL TO THE INS. WHILE THE AMENDMENT WOULD PROVIDE THE ALIEN WITH THE RIGHT TO A HEARING, IT PLACES UPON THE ALIEN THE BURDEN OF REQUESTING SUCH A HEARING. SINCE THE INITIAL CONFRONTATION BETWEEN THE ALIEN AND THE IMMIGRATION OFFICER IS AN INHERENTLY COERCIVE AND INTIMIDATING EXPERIENCE, MANY ALIENS MAY BE COERCED INTO WAIVING THEIR RIGHT TO A REDETERMINATION. CAL WOULD SHIFT THE BURDEN OF INFORMATION FROM THE ALIEN TO THE IMMIGRATION OFFICER AND ASSERT THE RIGHT OF EVERY EXCLUDIBLE ALIEN TO AN ADVERSERIAL HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE. WHERE THERE IS A DOUBT ABOUT THE ALIEN'S BASIS FOR ENTRY, THE ALIEN SHOULD BE ADVISED OF THE PRIVILEGE OF BEING REPRESENTED BY COUNSEL AND OF THE AVAILABILITY OF LEGAL SERVICES.

#### 4. JUDICIAL REVIEW - SECTION 123

THE MAZZOLI BILL EXTENDS THE CONCEPT OF JUDICIAL REVIEW TO ASYLUM ADJUDICATIONS. HOWEVER, THE PERIOD FOR FILING AN APPEAL HAS BEEN DRASTICALLY REDUCED FROM SIX MONTHS TO THIRTY DAYS. THE EXTENSION OF JUDICIAL REVIEW TO ASYLUM CASES IS MORE APPARENT THAN REAL. WHEREAS THE STANDARD OF REVIEW IN DEPORTATION AND EXCLUSION CASES REST ON A DETERMINATION OF WHETHER THE EVIDENCE BELOW IS SUPPORTED BY REASONABLE, SUBSTANTIAL AND PRO-  
BATIVE EVIDENCE, IN ASYLUM CASES, THE STANDARD OF REVIEW IS LIMITED TO A FINDING OF WHETHER THE COURT BELOW HAD JURISDICTION TO DETERMINE



THE ISSUE, WHETHER THE DETERMINATION WAS BASED ON THE APPLICABLE LAW AND WHETHER THE DETERMINATION WAS ARBITRARY OR CAPRICIOUS. C.A.L. OPPOSES THIS LIMITED STANDARD OF REVIEW IN ASYLUM CASES AND URGES A UNIFORM STANDARD FOR DEPORTATION, EXCLUSION AND ASYLUM CASES.

5. LABOR CERTIFICATION - SECTION 201

THE MAZZOLI BILL WOULD CHANGE THE EXISTING SYSTEM OF INDIVIDUAL LABOR CERTIFICATION IN FAVOR OF A SYSTEM OF BLANKET CERTIFICATION. UNDER THE PRESENT PROCEDURES, AN ALIEN APPLYING FOR CERTIFICATION WOULD BE ELIGIBLE FOR CERTIFICATION IF THERE WAS A FINDING BY THE DEPARTMENT OF LABOR THAT THERE ARE "INSUFFICIENT U.S. WORKERS WHO ARE ABLE, WILLING, QUALIFIED AND AVAILABLE AT THE TIME AND PLACE WHERE THE ALIEN IS TO PERFORM HIS WORK." UNDER THE MAZZOLI BILL, AN ALIEN APPLYING FOR LABOR CERTIFICATION WOULD ONLY BE ELIGIBLE FOR CERTIFICATION WHERE THERE WAS, FIRSTLY, NATIONWIDE FINDING OF INSUFFICIENCY IN THE OCCUPATIONAL TITLES SOUGHT BY THE ALIEN AND, SECONDLY, A DETERMINATION THAT U.S. WORKERS COULD NOT BE TRAINED FOR THOSE OCCUPATIONS WITHIN A REASONABLE PERIOD OF TIME. THUS THE STANDARDS FOR LABOR CERTIFICATION UNDER THIS NEW LEGISLATION WOULD BE MUCH MORE STRINGENT THAN UNDER THE OLD SYSTEM. C.A.L. OPPOSES THIS SYSTEM OF BLANKET CERTIFICATION AND WOULD URGE THE REINSTATEMENT OF THE EXISTING SYSTEM AS ENCOMPASSED IN PARAGRAPH (14) OF SECTION 212(a) (8 U.S.C. 1182).

6. ADJUSTMENT OF STATUS FOR NON-IMMIGRANTS - SECTION 131

UNDER EXISTING IMMIGRATION LAW, AN ALIEN WHO WAS LEGALLY ADMITTED INTO THE UNITED STATES CAN ADJUST HIS STATUS TO THAT OF PERMANENT RESIDENT IF HE MEETS CERTAIN CONDITIONS SECTION 245(a)

OF THE IMMIGRATION AND NATIONALITY ACT (8 U.S.C. 1255). BY PROHIBITING OUT-OF STATUS ALIENS FROM ENJOYING THIS PRIVILEGE, THE MAZZOLI BILL WOULD SEVERELY RESTRICT A LARGE POOL OF NON-IMMIGRANTS e.g. OUT-OF STATUS VISITORS AND STUDENTS, WHO HAVE TRADITIONALLY UTILIZED THIS PRIVILEGE. IT WOULD FORCE THEM TO RETURN TO THEIR COUNTRIES OF ORIGIN IN ORDER TO APPLY FOR PERMANENT RESIDENT STATUS. THE RESULTANT DELAYS AND MOVEMENT WOULD CAUSE UNNECESSARY DISRUPTIONS IN FAMILIAL AND OCCUPATIONAL RELATIONSHIP. C.A.L. OPPOSES THIS PROVISION AND URGES REINSTATEMENT OF SECTION 245 OF THE IMMIGRATION AND NATIONALITY ACT.

#### CONCLUSION

IT IS OUR CONTENTION THAT THE BILL REFLECTS A SERIOUS ATTEMPT BY THIS COMMITTEE TO GRAPPLE WITH THE COMPLEX PROBLEMS OF IMMIGRATION REFORM. THE AMNESTY PROPOSALS CONSTITUTE THE MOST FAR REACHING ATTEMPT YET OFFERED TO LEGALIZE THE STATUS OF THE THOUSANDS OF UNDOCUMENTED ALIENS ALREADY RESIDENT IN THE U.S. WE ENDORSE THIS CONCEPT AND WOULD EXTEND IT TO INCLUDE A CLASS OF ALIENS, WHO HAVE SUFFERED THE MOST CALLOUS AND PERVERSIVE FORM OF DISCRIMINATION AND PERSECUTION - THE HAITIAN REFUGEES. WHILE WE SUPPORT THE CONCEPT OF INCREASED ENFORCEMENT OF THE IMMIGRATION LAWS, WE FEEL THAT THE SYSTEM OF EMPLOYEE SANCTION AND VERIFICATION PROCEDURES PROPOSED WOULD RESULT IN THE VERY CONSEQUENCE WHICH IT WAS INTENDED TO AVOID - DISCRIMINATION AGAINST ALIEN WORKERS. THE PROPOSAL FOR JUDICIAL REVIEW IS LAUDABLE, BUT IT SHOULD EXTEND TO ASYLUM ADJUDICATIONS, THE SAME STANDARDS AS ARE APPLICABLE IN DEPORTATION AND EXCLUSION CASES. THE CONCEPT OF A DEFENDANT'S INALIENABLE

RIGHT TO A HEARING SHOULD BE EXTENDED NOT ONLY TO THOSE ALIENS PHYSICALLY PRESENT IN THE U.S., BUT TO THOSE ALIENS APPREHENDED AT OUR BORDERS, AIRPORTS AND INSPECTIONS STATIONS. THE EXISTING SYSTEM OF INDIVIDUAL LABOR CERTIFICATION AND ADJUSTMENT OF STATUS SHOULD BE MAINTAINED. WE FEEL, MR. CHAIRMAN, THAT IF THESE AMENDMENTS ARE INCORPORATED IN THE BILL, C.A.L. WOULD HAVE LITTLE DIFFICULTY IN ENDORSING THESE LEGISLATIVE PROPOSALS.

(212) 789-3661

## HAITIAN HOLY GHOST FATHERS

333 LINCOLN PLACE

BROOKLYN, N. Y. 11238

March 16, 1983

Testimony presented to the House Sub-Committee on Immigration,  
Refugees, and International Law, Chairman: Honorable R. Mazzoli

Mr. Chairman:

My name is Antoine Adrien, I am a Roman Catholic Priest from the Congregation of the Holy Ghost working with the Haitian Apostolate of the Diocese of Brooklyn. I am also the Chairman of CIRH (The Inter-Regional Council For Haitian Refugees). Today, I am here in the capacity as representative of the Haitian Community as a whole whose various organizations are also present through some of their own representatives.

The Haitian Community is in general agreement with the position paper on the Simpson-Mazzoli Bill presented by Attorney Colin Moore of the Caribbean Action Lobby, and we endorse all five amendments that will make the Bill a comprehensive immigration legislation. However, we Haitians have a unique experience that enables us to speak out, loud and clear, on certain specific changes we are advocating.

A true, general amnesty cannot exist, for example, with a cut-off date that is previous to the day of the introduction of the Bill. Our experience, as Haitians, has been, Mr. Chairman, one of frustration and suffering caused by improper actions taken by the



INS in its dealings with the Haitian boat people.

We have been singled out and kept in jails in concentration-camp-like conditions, without any possibility of release, under the pretext that Haitians would abscond if let free. Since Judge Spellman's decisions asking for the release of some 1900 Haitian boat people detained for 14 months by the INS, the contrary happened to be true: 99% of those released kept their pledge to appear for hearings. Is it possible, Mr. Chairman, that any legislative action could envision to send back to Haiti those 1900 after the agony they have been through because they arrived after January 1, 1980?

We Haitians have been victimized by ill-conceived administrative decisions that ignored reality. For example, the Carter Administration's so-called "Cuban/Haitian Entrant Status" with an arbitrary cut-off date of October 10, 1980, has left in total limbo some 15 to 20,000 Haitian boat people known as the "post 10/10/1980 Haitian refugees". Judge Spellman's decision covers only those jailed under the Reagan Administration Order of July 1981. If, for simple reason of decency, the 1900 Spellman's cases cannot be sent back as a group, on what grounds is the Simpson-Mazzoli Bill going to shut the door for the "post 10/10/1980 Haitian refugees?"

Furthermore, we Haitians have been victimized by a restrictive interpretation of the United Nations' definition of a "refugee". Under the pretext that the Haitian boat people were unlike the Vietnamese or the Cubans--"economic refugees" and not "political refugees", the INS has been for years throwing Haitian refugees in jail or setting high bonds for their release. The "double standard" that characterizes the INS treatment of refugees has been put in its true perspective by the statement of US foreign policy made by Mrs. Kirkpatrick, US Representative to the United Nations, distinguishing between "authoritarian governments" and "totalitarian governments": the former being the right-wing dictatorships friendly to the US, the latter being the Communist countries hostile to the US.

Because the government of Haiti is supported by the US, Haitian boat people cannot be, from the INS viewpoint, genuine bonafide refugees, no matter how compelling is the evidence of political conditions in Haiti as the "push factor" in the exodus. In his well-publicized ruling, "Haitian Refugee Center vs. Civiletti", Judge James Lawrence King emphatically stated that "The decision was made among high INS officials to expel Haitians, despite whatever claims to asylum individual Haitians might have". Only the right to judicial review of INS administrative actions allowed Haitian boat people to avoid "summary exclusion: and to survive this program "offensive to every notion of constitutional due process and to equal protection" (HRC vs. Civiletti, p.162).

You will understnad, Mr. Chairman, that the Haitian Community, coming from this excruciating experience, is afraid to see how severely the present Bill restricts the heretofore, guaranteed right of all asylum seekers to judicial review of administrative agency action.

In conclusion, Mr. Chairman, we urge you to amend the Simpson-Mazzoli Bill, taking into account the recommendations made by the Caribbean Action Lobby. If you do make the changes, the agony the Haitian Community has been through in this country for the past ten years will not have been totally in vain.

Thank you, Mr. Chairman

Mr. MAZZOLI. Thank you very much, Father Adrien and Mr. Congressman and Mr. Moore. We appreciate your testimony. And you can rest assured that every single word that you have given us today orally and in a written form will be considered by the committee.

As all of you know who have studied movement of this bill, its evolution over the last 2½ years, there have been quite significant changes made in our adjudication section from even the original bill draft. Of course, our bill is in a very different position than the Senate bill is right now, as Mr. Moore has said and supported.

We hope we can make even further adjustment that might suit the various groups. But perhaps you might have been in the room as you heard some of the earlier testimony. Within one delegation, there are polar opposite views on one section of the bill.

It makes our job very difficult because we have so many different groups to listen to. But your statements are very important, and particularly Father Adrien having ministered to the people of Haiti. You bring a personal situation to it that is very important.

So we thank you very much.

I yield if the gentleman from Florida has questions.

Mr. SMITH. Thank you, Mr. Chairman.

Being from a district in Florida that contains a great number of refugees and a great number of Haitians specifically, and having been in Haiti on a number of occasions well before this major problem started, and having seen the Haitian people, I can appreciate one thing that the Father said specifically in his little dialog with us which was the fact that there was a 99 percent or better compliance rate with the numbers of people who did return upon being released from those terrible conditions to be given the hearing and showing up at the hearing—in fact, waiting and asking specifically when they were going to get their hearings, some of whom have not.

As we know, there has not been a great move to have the hearings according to everyone that has been released. That is an unfortunate situation. We all sympathize with that. We are all very proud of the fact that they saw fit not to disappear, but rather to stand up and be counted in those terms.

The one thing that I am concerned about is, as the chairman has indicated, many times, there is a major problem with getting to the point of having everybody decide which are the most important points to them, which are those which are bargainable and those which are the least important.

We are never going to have a bill if everyone—and we have had large numbers of witnesses already and many more to come, Mr. Chairman, I am sure—comes here saying that the bill ought to be amended this way. We will probably have to take 500 amendments more than the 300 that were on the floor last year.

I would hope that all of the witnesses who have that feeling that they want the bill, but they want it amended in some form, would submit a list ultimately to this committee of the bottom-line things which are the single most important issues to them that are really what they consider to be substantial issues that would affect the bill completely if it were passed without changes that you recommend how it would not be workable.



But until we get a consensus on that basis, it is going to be very difficult to do anything.

One of the frustrations of being new and sitting up here is having to see what the chairman and the committee went through previously and having tried in vain, unfortunately, but so valiantly, to get everyone to agree on a bill that could be hopefully more appropriate for almost everyone and something that everyone could embrace because that is almost impossible.

But the plight is there; We understand it.

I only have one question, and I just throw it out to anybody that cares to answer it. Would you believe from what I have heard in testimony so far and previously that in fact every person who comes to the United States, whether by legal or—I don't want to use the word illegal, but whatever means they arrive on our shores—everyone of those people is entitled to constitutional due process of the United States.

That means a complete and open constitutional process from day one until adjudication possibly by the U.S. Supreme Court.

Mr. MOORE. I believe the Supreme Court has already spoken in that respect. There is a case whose name I can't recall that says anyone who is physically present in the United States is entitled to the constitutional protections of this country. We certainly would subscribe to that belief.

Mr. OWENS. Congressman, I think also the kind of time we have been giving to cases involving colleges, very extended trials and reviews, et cetera, is indicative of just how far we will go with that principle, of any individual who is physically present, renders that kind of treatment.

Father ADRIEN. Besides, Mr. Smith, I think we should look at the other end of the story. When you get rid of those guarantees, what happens to individuals? The case of the Haitians is really not quite enough. Every type of abuse has been imposed upon us because we have been denied due process.

It is not the matching for everybody in the United States, not only for those who are suffering, but for those who are imposing the suffering. You know, liberty and equality is not divisible.

Mr. SMITH. Thank you.

Mr. MOORE. Perhaps a more relevant question would be whether those were excludable as well, those who were not, so to speak, legally entitled to land, whether those should be given constitutional protections. I think your bill attempts to address that problem.

Mr. MAZZOLI. Thank you.

The gentleman's time has expired.

The gentleman from Florida.

Mr. MCCOLLUM. I have no questions.

Mr. MAZZOLI. Gentlemen, thank you very much. I appreciate your testimony. As the gentleman before, Mr. Smith, said, we are trying to assimilate all this information and appraise it and see where we are and try to come up with something that is workable.

We thank you for your help.

Mr. OWENS. Thank you, Mr. Chairman. First, for us, this is a life-and-death matter in Brooklyn. A lot of leaders from Brooklyn have joined me this morning.



Mr. MAZZOLI. I welcome the gentlemen and ladies from Brooklyn. They are welcome to stay as long as they wish to be with us or leave when they have to. We thank you very much.

Mr. OWENS. Thank you again.

Mr. MAZZOLI. Since we began, our other distinguished colleague, Mr. Scheuer from the State of New York, has arrived. Again, I would poll our delegation here. Would you be disposed to let Mr. Scheuer testify first?

I might say to the crowd, the panel before us has been very helpful. They were here at 8:30, which was the arrangement. At that point, none of our members was here. As they began, our members came. So, in order to get our members on the floor at 10 o'clock when we begin our business, we thought we would move on.

So with your permission, I call my good friend and our colleague from New York, Congressman Scheuer, forward.

Jim, while you are arranging yourself, we will let our friends from Brooklyn leave.

Thank you all for coming, for making that long trip from New York. It is nice to see you.

Congressman Scheuer.

#### TESTIMONY OF JAMES H. SCHEUER, U.S. REPRESENTATIVE FROM THE 11TH DISTRICT OF THE STATE OF NEW YORK

Mr. SCHEUER. Mr. Chairman, I will give you my prepared testimony.

Mr. MAZZOLI. Thank you very much, Jim. You are welcome, and you are recognized.

Mr. SCHEUER. Mr. Chairman, if I may take a moment to answer Mr. Smith's last question before I advert to my testimony, let me say, first, until January 2 at midnight, half of my district was in Brooklyn. My district now encompasses three other boroughs in and around New York—Bronx, Queens, and Nassau. I think I understand the concerns of the people of New York.

I think that they are very concerned that we bring some rationality to the whole problem of illegal immigration on our borders which now constitute a sieve. They have not been dignified by the word borders.

We are a very compassionate people who believe deeply in the Judeo-Christian ethic and the compassion that surrounds our Constitution and the Statute of Liberty.

Two-thirds of all the refugees who cross national borders in the world come to the United States. We are doing far more—far more—than any conceivable level of obligation that we have. I am proud that we are doing far more. I am proud that we are the haven for two-thirds of all of the refugees that cross national borders.

But I don't think we have to do 100 percent of the job, regardless of the effect that it has on American society. When the question is asked should anybody who crashes through our borders illegally have the full panoply of constitutional protections, I have to ask the effect that this mass of illegal immigration, this wave, this inundation of illegal immigration, has first on the many hundreds of

thousands of people who have applied abroad legally to come into our country legally.

What effect does it have on them? Is there now some palpable unfairness about asking people who have applied and who are waiting listed maybe 5 or 10 or 12 or 15 years long, who sit patiently while two to 2,000, 3,000, or 4,000 people per day crash into our country without let or hindrance, without waiting, just because they want very badly to be here?

Other people want very badly to be here and are coming through by legal process, part of the two-thirds of all the immigrants who cross national boundaries in the world who end up as invitees into this country by legal process.

So I ask, No. 1, isn't there a palpable unfairness to the proposition that people who crash into our country now are entitled to all kinds of constitutional guarantees to a process that goes on unendingly and at enormous cost to our taxpayers while people who have obeyed our laws and have made application in a proper legal way are asked to sit for a decade or longer waiting for that door to open legally?

Second, I ask is our framework of laws and framework of legal process able to take the load of 1 million or more people who can be expected to crash through, each being entitled to long, detailed, and expensive constitutional processes?

I know of no country in the world other than ours who affords that kind of protection to people who are apprehended just having passed through. Generally, the custom is—and this is in civilized, developed countries—they are taken by the hand and escorted to the border, and they are asked to return from whence they came.

There has got to be another answer than giving these people full protection of all of our constitutional rights. Our legal system, I don't think, can take that burden. I would like to see the experience analyzed of what happens to our illegal immigrants into Florida and who come across the Mexican-American border. What kind of pressures do they constitute on our legal system, and how will we be able to cope with them?

Mr. Chairman, I am going to be very, very brief because I know your schedule is limited. I will submit my prepared testimony.

I support this bill. I support it as coming to the floor. I supported it last year, and I will support it when it comes to the floor this year. I will do everything I can to expedite its way to the floor. I feel it is long overdue.

I have four amendments to the bill, one of which I will discuss this morning very briefly.

The amendment that I would propose that is relevant to this morning's discussion is an amendment that would delay amnesty until there is some declaration by an impartial objective body that our borders are reasonably secure and that the amnesty itself will not produce an avalanche of illegal immigration.

You must understand in considering this law that what push pressures we have seen from the developing countries of the world into our country will be a mild trickle compared to the avalanche that we can expect in the future, that we can confidently expect in the future. Because the demographic realities of the developing world, the population explosion in the developing world, and espe-



cially the growth in the labor market in the developing world are going to produce pressures on young people for jobs, for a decent standard of living, for a hope for a better life, that they can only satisfy through immigration.

The people are already born throughout the developing world, already born, who themselves will be entering the job market 5 years, 10 years, 15 years, 20 years, from now and will radically increase the push pressures, the pressures to immigrate. Irresistably, there is very little choice on their parts.

They end up, most of them, trying to come to the United States. Most of them, if they try hard enough, can crash across our borders.

How much time do I have?

Mr. MAZZOLI. You take as much as you will need.

Mr. SCHEUER. I will take another minute.

Mr. MAZZOLI. OK, good.

Mr. SCHEUER. Let me suggest Mexico. When I first went to Mexico with the American Friends Service Committee in 1940, their population was 21 or 22 million. Now, their population is about 75 million. By the year 2000, it will be about 123 or 124 or 125 million. In my lifetime, their population will have quintupled. Their labor force will grow even faster than that.

Now, there is no way on Earth, come the year 2000 that 125 million Mexicans can survive in that country. There isn't enough land, there isn't enough water, there isn't enough air, there aren't enough resources. So when I say that the population of Mexico is now 75 million and by the year 2000 it will be 125 million, that is a bit of a fraud on my colleagues who are sitting up there.

What I should be saying is in the year 1940, on the North American Continent, there were perhaps about 22 or 23 million Mexicans. In the year 1975, there are probably 85 million Mexicans on the North American Continent, about 10 million or 12 million in the United States and about 75 million in Mexico.

By the year 2000, we expect about 130 or 140 million Mexicans on the North American Continent, maybe 30 or 40 million in the United States and maybe 75 or 80 million, maybe 85 million in Mexico.

That is the only realistic way to look at these exponentially growing population figures, the exponentially growing labor market figures, which is even more important because it is the young people in the labor market who, not finding any jobs, have to go elsewhere.

Mexico in the period between now and the year 2000 will have to produce—

Mr. MAZZOLI. 19.3.

Mr. SCHEUER. Pardon?

Mr. MAZZOLI. 19.3 million.

Mr. SCHEUER. Jobs, that's right. They will have to produce about 950,000 jobs now and over 1 million jobs toward the end of the century. There is no way on Earth that there is any reasonable hope, however marginal, that anything like these new jobs can be produced.

Where are these people going to go? We know full well where they are going to go. The question is: What are the effects on this

kind of mass inundation of illegal immigrants without language skills, without job skills, without urban skills, into our country? What will the pressures be on our own public systems for welfare and housing and education and health and law enforcement?

How can we cope with this? Do we want to undergo the agonizing costs and the tensions that will be imposed on our society?

Mr. Chairman, I am grateful for your time and your courtesy. I will submit my prepared testimony.

[The complete statement follows:]



TESTIMONY OF  
THE HON. JAMES H. SCHEUER

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES,  
AND INTERNATIONAL LAW

OF THE

HOUSE COMMITTEE ON THE JUDICIARY

16 MARCH 1983

GOOD MORNING, I APPRECIATE THIS OPPORTUNITY TO TESTIFY BEFORE THE SUBCOMMITTEE.

I WORKED TO BRING THIS BILL TO A FULL VOTE DURING THE LAST SESSION OF CONGRESS, AND I FULLY SHARE THE SUBCOMMITTEE'S VIEW THAT THIS BILL IS LONG OVERDUE.

THERE ARE FOUR AMENDMENTS WHICH I HOPE TO INTRODUCE TO HR.1510. HOWEVER, TODAY MY MAJOR CONCERN IS WITH LINKING AN AMNESTY PROGRAM WITH MEASURES TO SECURE OUR BORDERS. I PROPOSE THAT THE FORMER BE DELAYED UNTIL THE LATTER HAS OCCURRED.

DELAYING THE START OF AN AMNESTY PROGRAM WILL ACCOMPLISH TWO THINGS. IT WILL:

- (1) OFFER REASSURANCE TO THOSE WHO LINK AMNESTY WITH EFFORTS TO STEM THE FLOW OF ILLEGAL ALIENS (WHETHER BY EMPLOYER SANCTIONS OR BORDER SECURITY, AS I PROPOSE); THAT AMNESTY WILL ULTIMATELY OCCUR,
- (2) ALLOW TIME FOR THE PLANNING NECESSARY FOR THE EFFECTIVE OPERATION OF AN AMNESTY PROGRAM.

THERE ARE SOME STARTLING DEMOGRAPHIC FACTS WHICH ARE RELEVANT TO THE PROBLEM AND WHICH UNDERScore THE URGENCY OF TAKING STEPS TO LESSEN THE PRESSURES ON OUR BORDERS. WHATEVER PRESSURES EXIST TODAY CAN ONLY BE EXACERBATED BY THE

DEMOGRAPHIC REALITY OF THE FUTURE. I.E., "YOU AIN'T SEEN NUTTIN' YET!"

WHILE ARGUMENTS IN FAVOR OF EMPLOYER SANCTIONS STRESS "PULL" FACTORS (THOSE WHICH PULL MIGRANTS TOWARD THE UNITED STATES), I WILL CONCENTRATE ON "PUSH" FACTORS, FOCUSSING ON DEMOGRAPHIC FACTS IN SENDING COUNTRIES.

ALTHOUGH ONLY APPROXIMATELY HALF OF ILLEGAL IMMIGRANTS COME FROM MEXICO, A MORE GENERAL SITUATION CAN BE ILLUSTRATED WITH DATA FROM THAT COUNTRY BECAUSE IT IS THE LARGEST NATION SENDING IMMIGRANTS TO THE U.S., WHETHER LEGAL OR ILLEGAL. THE SAME STORY, HOWEVER, CAN BE REPEATED FOR MOST COUNTRIES IN CENTRAL AMERICA AND THE CARIBBEAN; ADDITIONAL DATA TO THIS EFFECT ARE CONTAINED IN AN APPENDIX TO THIS TESTIMONY.

IN 1940, MEXICO'S POPULATION NUMBERED ABOUT 23 MILLION. TODAY, SOME 43 YEARS LATER, IT HAS REACHED 75 MILLION. BY THE TURN OF THE CENTURY, IT WILL SURPASS 116 MILLION. (THESE ARE THE CONSERVATIVE ESTIMATES OF THE CENTRO LATINO AMERICANO DE DEMOGRAFIA, CELADE, A BRANCH OF THE UNITED NATIONS.)

THESE PROJECTIONS ASSUME A DECLINE IN THE FERTILITY RATE OF MEXICO!

TO UNDERSTAND HOW THIS CAN BE -- A CONTINUED INCREASE IN THE POPULATION AT THE SAME TIME THE FERTILITY RATE IS DECLINING -- IT IS NECESSARY TO GO BACK A GENERATION. FERTILITY WAS AS HIGH AS IT HAD BEEN FOR GENERATIONS, WHILE MORTALITY (ESPECIALLY AMONG INFANTS AND CHILDREN) BEGAN TO FALL PRECIPITOUSLY. THIS WELCOME PHENOMENON HAPPENED TO A GREAT EXTENT BECAUSE OF U.S. HEALTH AND MEDICAL ASSISTANCE. WE SHOULD BE JUSTLY PROUD OF

THIS HUMANE ACCOMPLISHMENT.

UNFORTUNATELY, DECLINES IN FERTILITY DID NOT ACCOMPANY THESE SPECTACULAR DECLINES IN MORTALITY. THE DEMOGRAPHIC TRANSITION FROM A HIGH-FERTILITY-HIGH-MORTALITY SOCIETY TO A LOW-FERTILITY-LOW-MORTALITY SOCIETY TAKES TIME. THE SOCIETY DESCRIBED HERE, MEXICO, IS PASSING THROUGH A PERIOD WHEN MORTALITY IS LOW WHILE FERTILITY, ALTHOUGH DECLINING, IS STILL HIGH, RESULTING IN RAPID POPULATION GROWTH.

IN ADDITION TO UNDERSTANDING THE DEMOGRAPHIC TRANSITION, WE MUST ALSO UNDERSTAND THE CONCEPT OF "DEMOGRAPHIC MOMENTUM." THE BABIES WHO SURVIVED IN THE 1950s AND 1960s (WHO IN EARLIER GENERATIONS WOULD HAVE DIED) ARE TODAY'S YOUNG ADULTS, FORMING HOUSEHOLDS AND HAVING THEIR OWN CHILDREN, NOW A GIANT GENERATION. THAT IS WHY THE TOTAL POPULATION WILL CONTINUE TO GROW, EVEN IF EACH WOMAN NOW HAS FEWER CHILDREN THAN HER MOTHER OR GRANDMOTHER. THERE ARE SO MANY WOMEN IN CHILDBEARING AGES NOW THAT BIRTHS WILL NUMBER MORE THAN DEATHS. THAT IS WHAT MAKES THE CURRENT SITUATION SO DIFFERENT FROM ANY THAT HAS EVER OCCURRED BEFORE.



LET ME TURN NOW FROM PROJECTIONS OF THE TOTAL POPULATION TO PROJECTIONS OF THE LABOR FORCE. FOR THE NEXT 20 YEARS, SUCH PROJECTIONS ARE VERY EASY: THE WORK FORCE 20 YEARS HENCE HAS ALREADY BEEN BORN!

BETWEEN NOW AND THE YEAR 2000, WITH NO ANTICIPATED CHANGE IN LEVELS OF UNEMPLOYMENT AND UNDEREMPLOYMENT, MEXICO WILL NEED TO ADD ABOUT 950,000 JOBS A YEAR -- 775,000 PER YEAR NOW, THEN OVER A MILLION EACH OF THE LAST FIVE YEARS OF THIS CENTURY. IN 17 YEARS, A TOTAL OF 17 MILLION NEW JOBS WILL BE NEEDED. IT IS SURELY AN UNDERSTATEMENT TO SAY THIS IS A FORMIDABLE TASK FOR ANY NATION'S ECONOMY.

IT CAN BE ASSUMED THAT THE RECENT DEVALUATION OF THE PESO HAS RESULTED IN THE LOSS OF A SIGNIFICANT NUMBER OF JOBS. THIS IS THE WRONG DIRECTION FOR AN ECONOMIC TREND IF MATTERS ARE TO IMPROVE!

WHAT ARE THESE UNEDUCATED, DESPONDENT, AND DISCOURAGED YOUNG PEOPLE TO DO? A MOVE ACROSS THE BORDER IS AN OBVIOUS AND HISTORICALLY A FREQUENTLY SELECTED OPTION.

BUT THIS IS ONLY ONE PART OF THIS DISMAL, TRAGIC PICTURE. LET ME NOW TURN TO OUR OWN ECONOMIC SITUATION AND SPECULATE ON SOME MAJOR IMMINENT LABOR FORCE CHANGES. JUST A FEW WEEKS AGO, THE HIGH-TECH BUSINESS WORLD WAS STARTLED BY THE ANNOUNCEMENT THAT A MAJOR COMPANY PLANNED TO SHIFT A MAJOR

PORTION OF ATARI ASSEMBLY TO AN ASIAN COUNTRY. SOME 2000 JOBS WILL BE LOST TO CALIFORNIANS. AND JUST A WEEK AGO, THE ENGLISH COMPUTER WIZ CLIVE SINCLAIR FORESAW A SOCIETY, WHETHER GREAT BRITAIN OR THE UNITED STATES, WHERE MOST MENIAL ASSEMBLY LINE JOBS WILL HAVE BEEN TRANSFERRED TO DEVELOPING COUNTRIES WHERE LABOR IS CHEAP. SOME MENIAL SERVICE JOBS WILL REMAIN (WINDOWS WILL STILL HAVE TO BE WASHED, OFFICES CLEANED, DISHES CLEARED IN RESTAURANTS). BUT WE WILL OVERWHELMINGLY BE AN EDUCATED, HIGHLY TRAINED SOCIETY WHERE THE DEMAND FOR HIGHLY SKILLED PERSONNEL WILL FAR OVERSHADOW THE NEED FOR THE UNSKILLED.

THUS, AN ENORMOUS CHALLENGE JUST NOW BEGINNING TO CONFRONT US IS HOW WE CAN PREPARE THE YOUTH ALREADY RESIDING HERE FOR THESE HIGH-TECH JOBS.

HOW AND WHERE WILL THE THOUSANDS OF UNSKILLED NEWCOMERS FIT IN?

WILL WE BE ABLE TO ABSORB THEM IN SUCH LARGE NUMBERS? HOW, AND BY WHAT KINDS OF PROGRAMS?

YOUNG ADULTS WITH LITTLE IF ANY EDUCATION, LACKING FLUENCY IN ENGLISH, CAPABLE ONLY OF PERFORMING THE DWINDLING NUMBER OF MENIAL JOBS IN SUCH A SOCIETY, WILL FIND ADJUSTMENT TO OUR INCREASINGLY TECHNICAL SOCIETY MORE DIFFICULT THAN EVER BEFORE.

OUR SOCIETY'S TASK OF TRANSFORMATION FROM WHAT WE ARE TODAY TO WHAT IS NEEDED IN THE FUTURE WILL BE EXCEEDINGLY DIFFICULT, REGARDLESS OF THE NUMBERS ADDED TO OUR POPULATION. IT CAN BE MADE SOMEWHAT LESS DIFFICULT IF THOSE NUMBERS ARE MODERATE RATHER THAN OVERWHELMING.

WE MUST: (1) PREVENT AN AMNESTY PROGRAM, PREMATURELY INSTITUTED, FROM ACTING AS A MAGNET TO EVEN-LARGER NUMBERS OF WOULD-BE ILLEGAL IMMIGRANTS; (2) BUY TIME TO DESIGN AN APPROPRIATE AMNESTY PROGRAM; (3) SECURE OUR BORDERS AS A MEASURE TO STEM THE FLOW OF ILLEGAL ENTRANTS; AND (4) ENCOURAGE OTHER NATIONS IN THE HEMISPHERE AND ELSEWHERE TO TAKE THEIR DEMOGRAPHIC PRESSURES SERIOUSLY AND WORK TOWARD APPROPRIATE POLICIES.

TO GIVE US TIME AND BREATHING SPACE NECESSARY TO ACCOMPLISH THESE GOALS, I PROPOSE AN AMENDMENT TO TAKE MEASURES FIRST THAT WILL GREATLY INCREASE BORDER SECURITY, THEN AND ONLY THEN INTRODUCE AN AMNESTY PROGRAM.

THESE CONCERNS ARE HEMISPHERIC AND GLOBAL IN NATURE. THE RECENT WESTERN HEMISPHERE CONFERENCE OF PARLIAMENTARIANS ON POPULATION AND DEVELOPMENT REMINDED US THAT THERE IS AN URGENT NEED FOR INCREASED DIALOGUE AMONG SENDING AND RECEIVING NATIONS, AND THAT THROUGH INCREASED BILATERAL AND MULTILATERAL EXCHANGES, WE CAN STIMULATE MORE REALISTIC AND FORWARD-LOOKING NATIONAL POLICIES.

SOME NATIONS HAVE, PERHAPS DELIBERATELY, PERHAPS BY DEFAULT, EVADED THE URGENT QUESTIONS POSED BY SEVERE PRESSURES RESULTING FROM RAPID DEMOGRAPHIC GROWTH. THEY MAY EVEN HAVE ENCOURAGED THE NOTION THAT EMIGRATION PROVIDES A SAFETY VALVE

FOR EXCESS POPULATION, PARTICULARLY AMONG THE LABOR FORCE. YET THE DETRIMENTAL EFFECTS ON SENDING COUNTRIES HAVE RECEIVED LITTLE RECOGNITION.

THE BRAIN DRAIN IS THE MOST WIDELY RECOGNIZED OF THESE EFFECTS. THE EXODUS OF HIGHLY TRAINED PROFESSIONALS ROBS A SENDING COUNTRY NOT ONLY OF ITS INVESTMENT IN THE EMIGRANT'S EXTENDED EDUCATION, BUT ALSO OF HIS/HER PROFESSIONAL SERVICES AND EXPERTISE FOR THE REMAINDER OF HIS/HER LIFETIME.

LESS WELL RECOGNIZED, AND MORE SIGNIFICANT IN A NUMERICAL SENSE, IS THE EXODUS OF MIDDLE MANAGERS, TEACHERS, HEALTH PERSONNEL, OFFICE WORKERS, GARAGE MECHANICS.

AND EVEN AMONG THE UNSKILLED, EMIGRATION SIPHONS OFF THE MOST VIGOROUS, AMBITIOUS, AND UPWARDLY MOBILE.

HEMISPHERIC DIALOGUE SHOULD CONFRONT EMIGRATION PROBLEMS HEAD-ON -- PROBLEMS AFFECTING DISRUPTION OF FAMILIES AND OF VILLAGE AND COMMUNITY SOCIAL STRUCTURE, AGRICULTURAL PATTERNS, AND THE ABILITY OF A NATION TO FEED ITSELF. FOR EXAMPLE, AN ASTONISHING PROPORTION OF ARABLE LAND IN JAMAICA (PERHAPS AS MUCH AS ONE THIRD) LIES UNCULTIVATED, ITS OWNERS CURRENTLY ABROAD, EXPECTING TO RETURN HOME IN RETIREMENT.

IN SUM, WE HAVE A DUAL RESPONSIBILITY. ON THE ONE HAND, AMERICAN POLICYMAKERS MUST BE COGNIZANT OF THE ENORMOUS PRESSURES FOR



INCREASED EMIGRATION THAT ARE SURE TO TEST AMERICAN EFFORTS TO SECURE OUR BORDERS AND ENSURE THAT THE NUMBER OF ENTRANTS CAN BE ABSORBED INTO OUR CHANGING SOCIETY.

BUT IT IS ALSO INCUMBENT UPON US TO MEET WITH OUR COLLEAGUES IN THE HEMISPHERE AND IN OTHER PRIMARY SENDING COUNTRIES. WE MUST ENGAGE THEM IN A DIALOGUE WHICH WILL STIMULATE AN APPROPRIATE LEVEL OF AWARENESS OF THEIR OWN POPULATION GROWTH, ECONOMIC PROBLEMS, LABOR FORCE IMBALANCE, AND MASS MOVEMENTS OF PEOPLE.

BY PARTICIPATING WITH THEM IN SUCH A DIALOGUE, WE CAN HOPE FOR MORE REALISTIC POLICYMAKING FOCUSSED ON THESE PROBLEMS IN THE FUTURE.

## APPENDIX

THE NUMBERS WHICH FOLLOW SHOULD BE CONSIDERED WITH CAUTION. THEY ARE INCLUDED HERE PRIMARILY TO INDICATE ORDERS OF MAGNITUDE (ABOUT WHICH THERE CAN EASILY BE CONSENSUS) AND NOT TO SUGGEST SPECIFIC NUMBERS (ABOUT WHICH THERE CAN BE SOME DISAGREEMENT).

I WANT TO STRESS THAT I DO NOT SUBSCRIBE TO PURE DEMOGRAPHIC DETERMINISM. THERE ARE MANY FACTORS THAT MEDIATE BETWEEN THE DEMOGRAPHIC "GIVENS" AND THE ACTUALL NUMBERS OF PEOPLE WHO CROSS, OR ATTEMPT TO CROSS A BORDER. AN INCREASE IN LABOR FORCE DOES NOT TRANSLATE INTO A ONE-FOR-ONE INCREASE IN ILLEGAL MIGRANTS. MIGRANTS ARE, IN FACT, RARELY FROM AMONG THE MOST DISADVANTAGED, NOR ARE THEY DRAWN EQUALLY FROM ALL AREAS OF A SENDING COUNTRY, FOR EXAMPLE.

I DO MEAN TO SUGGEST, HOWEVER, THAT POPULATION PRESSURES OF THE MAGNITUDES INDICATED HERE CANNOT BE IGNORED AND MUST SURELY LEAD TO SIGNIFICANT ADDITIONAL PRESSURES FOR MIGRATION.

Estimated Numbers of New Jobs to be Created

	<u>1980-2000</u>	<u>per year</u>
Latin America	<del>15</del> <sup>82</sup> ,000,000	4,000,000
Middle America	26,300,000	1,300,000
Caribbean Basin	35,000,000	1,750,000
Mexico	19,300,000	965,000
Haiti	1,800,000	90,000
El Salvador	1,600,000	80,000
Jamaica	225,000	11,250

## LATIN AMERICA

(includes Mexico, Central and South America & Caribbean)

1980	364 million
1983	381 million
2000	565 million
2025	865 million

i.e., increasing 10 million a year

mortality is still declining

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Labor Force

1950-75 much of the increase in labor force was absorbed by the rural sector, which is no longer possible; labor force in rural areas is flattening out; increases must be absorbed in urban sector.

Rural:	1980	41 million	2000	49 million
Urban:	1980	74 million	2000	148 million
Total:	1980	115 million	2000	197 million

i.e., 4 million new jobs need to be created every year till 2000, and more than that after 2000. (In the U.S., in the relatively prosperous 1970s, 2 million jobs a year were created; the U.S. GNP is five times that of Latin America.)

The starting point, 1980 unemployment in some countries is 15-20%; underemployment and unemployment together approach 50-60%. Can this be maintained, or will it increase?



## CARIBBEAN BASIN

(includes Mexico, six Central American countries, and islands)

1980	122 million
1983	132 million
2000	200 million
2025	300 million

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## Labor Force

1980	37 million
2000	72 million

The need for additional jobs in the Caribbean Basin is even more of a problem than in Latin America as a whole. While the total Latin American GNP is one fifth that of the U.S., the GNP among Caribbean Basin nations is less than one tenth that of the U.S.

## MIDDLE AMERICA

(includes Mexico and six Central American countries)

Total Population

1980 92.3 million

1983 100 million

2000 156 million

2025 243 million

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Labor Force

1980 26.7 million

2000 53 million

## MEXICO

1980	69.7 million
1983	72 million
2000	116 million
2025	174 million

median age: 17

Mexico City, current population 17 million (was 5.6 million in 1960)  
 2000 projected 32 million

In 1960, 6 million women gave birth to 1.8 million children

In 2000, 25 million women will give birth to 3.1 million children

i.e., even with a significant decline in the birth rate, there  
 will be many more born in 2000 because there will be som many  
 more women of reproductive age.

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 Labor force

1980	19.5 million
2000	38.8 million

## HAITI

1980	5.8 million
1983	6 million
2000	10 million
2025	18 million

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## Labor force

1980	2.8 million
2000	4.6 million

## EL SALVADOR

1950 population	1.9 million
1980	4.8 million
2000	8.7 million
2025	15.0 million

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## Labor Force

1950	663,000
1975	1.4 million
1980	1.6 million
2000	3.2 million
2025	5.6 million



## JAMAICA

1980

1983 2.2 million

2000 2.9 million

2025 3.8 million

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## Labor Force

1950 605,000

1975 672,000

The low growth between 1950 and 1975 was not a reflection of low fertility, but of emigration (to Canada, U.S., and U.K., where doors are now closing)

12% of the labor force growth occurred in the first 25 of these 50 years, and 78% of it is expected in the second 25 years.

Projected U.S. Population Size and Growth Rate, 2000 to 2080, by Level of Annual Net Migration and Total Fertility Rate

Total Fertility Rate	Year					
	2000			2050		
	Total population (1,000s)	Population growth rate (%)	Total population (1,000s)	Population growth rate (%)	Total population (1,000s)	Population growth rate (%)
<i>Annual net migration = 0</i>						
1.8	243,677	0.3	244,835	-0.2	227,315	-0.4
2.0	250,348	0.4	267,797	0.03	264,851	-0.06
2.2	257,722	0.5	295,010	0.3	311,603	0.3
<i>Annual net migration = 500,000</i>						
1.8	255,402	0.5	277,603	0.06	274,125	-0.08
2.0	262,287	0.6	302,059	0.3	314,957	0.2
2.2	269,896	0.8	330,986	0.5	365,620	0.5
<i>Annual net migration = 750,000</i>						
1.8	261,265	0.6	293,987	0.2	297,530	0.04
2.0	268,257	0.7	319,190	0.4	340,009	0.3
2.2	275,983	0.9	348,974	0.6	392,631	0.6
<i>Annual net migration = 1,000,000</i>						
1.8	267,127	0.7	310,371	0.3	320,935	0.1
2.0	274,226	0.8	336,321	0.5	365,063	0.4
2.2	282,070	1.0	366,962	0.7	419,641	0.7

Source: Leon F. Bouvier, "The Impact of Immigration on U.S. Population Size," *Population Trends and Public Policy* (Washington, D.C.: Population Reference Bureau, 1981).

Mr. MAZZOLI. Thank you.

Mr. SCHEUER. But I think we have the most agonizing questions to face if we are realistically going to look at the hard prospects for vastly increased illegal immigration. It seems to me the least we can do is defer amnesty which if we don't harden our borders will be a most powerful magnet in inviting a vast inundation of illegal immigrants who, I feel, we can't cope with without severe damage to every aspect of the warp and woof of our society.

Mr. MAZZOLI. I had a chance to read your statement last night. It is very interesting. On page 6 of it, you give your general plan, and the appendices to it are interesting because you project the number of jobs needed by Latin America, Middle America, Caribbean Basin, and some of the countries within it. It certainly poses some real problems.

We have talked at our subcommittee at length—the gentleman from Florida and the other gentleman from Florida, too—about these national problems and some of the things we can do which would perhaps alleviate some of these pressures. But as your statement points out, we have a difficult task ahead.

But it is statements like yours and your help that will get us to some sort of a goal. So we do appreciate it very much.

Mr. SCHEUER. Let me just add one more question, Mr. Chairman. Many of these issues for us to look for a constructive solution have to involve constructive steps on the part of the sending country. We should engage in all kinds of dialog with them.

We should have you leading missions down there to talk with Mexico and the Caribbean countries and the countries of South America and the countries of Asia and Africa that are the sending countries. We are engaged in a constructive nonconfrontational, positive, creative process of dialog with them to see if together somehow with some funding help from us we can't develop the programs that will improve the quality of life in these countries and that will, therefore, lessen the push factors, the factors that are sending young people out of these countries in unbelievable numbers.

We shouldn't just issue fiats; we shouldn't issue legal fiats regarding our border or regarding the legal process without involving them in a constructive and helpful dialog in which they perceive that there is a joint problem that we have to work out jointly, hopefully by achieving some kind of a consensus on a wide variety of programs that will be complementary, that will create a wholistic approach to the whole problem of why there is a push factor and what can be done about it if we work constructively and creatively with the sending countries.

Mr. MAZZOLI. The gentleman from Florida.

Mr. SMITH. I have no question, just thank you for the testimony. You have been involved a long time and chaired a committee with reference to the demographic problems and the push factors.

I know he is very well intentioned and has a lot of good ideas on the subject and hope he stays in touch with the committee constantly because we can benefit from what he does. He is, obviously, immanently correct, the push factors will exist.

Mr. SCHEUER. They not only will exist; they will grow off the chart and off the wall.

Mr. SMITH. The more money we spend in coping with the problems at the local level is an investment that probably we will save 10 times that much or more in not only human tragedy, but in dollar terms.

Mr. MAZZOLI. I thank the gentleman.

Mr. SCHEUER. I thank you, Mr. Chairman, for your courtesy.

Mr. MAZZOLI. Again, let me thank the legal panel. You have gone through your apprenticeship. We appreciate it.

Mr. Roberts, you had finished. According to our chart Ms. Gonzalez was the next one listed. So let's just kind of stick to that.

Ms. Gonzalez, you are recognized for 5 minutes.

#### TESTIMONY OF JOSIE GONZALEZ, CHAIR, LEGISLATIVE COMMITTEE OF THE LOS ANGELES COUNTY BAR ASSOCIATION

Ms. GONZALEZ. Thank you. Good morning.

First, I would like to clarify that I am speaking today, not on behalf of the entire Los Angeles County Bar, but solely on behalf of the Immigration Section of the Los Angeles County Bar.

I wish to thank you for extending this invitation, and I would like to express my admiration for the members of the House subcommittee who have labored so hard in undertaking the task of drafting this legislation.

As a former staff advisor to the select commission, I am well aware of the mountains of research and investigation you and your staff had to read prior to drafting this legislation. It is precisely because I sincerely respect the work of this subcommittee and understand the complexity of the issues that I find myself reluctant to criticize this bill.

Nevertheless, the Immigration Section of the Los Angeles County Bar has grave reservations over whether this bill, as currently drafted, will yield the desired result, control, and reform.

We wish to focus on what we consider to be one of the major flaws in this legislation, the employer penalty provisions. I feel that I can speak with some authority on the issue of employer penalties because my law practice is centered in California, a State which has on the books Labor Code 2805 which requires employers to record work authorization data and penalizes them for knowingly hiring aliens without work authorization.

I have experienced the drawbacks of this type of law. Although the law is not presently being enforced, I find that the majority of employers attempt to comply. But daily I receive phone calls from frustrated personnel managers presented with dubious documents who can't get through to the busy INS phone lines.

I have also been called by employers who have faithfully recorded green card numbers, but are still threatened with immigration raids.

In imposing sanctions prior to the implementation of a secure system of identification, the bill puts the cart before the horse. It is impossible to expect an employer to verify alien data if the verification system itself will take 3 years to develop.

This law will be largely unenforceable due to the difficulty of proving that undocumented aliens are knowingly being hired. Even



if employers record work authorization data, fraudulent alien cards are easy to obtain.

Particularly at the better paying jobs attractive to U.S. workers, Americans of foreign parentage will no doubt be discriminated against by overcautious employers fearful of prosecution. However, if Congress decides to go forward with employer sanctions, we recommend the following:

First, no penalties should be imposed until the executive branch certifies in a report to Congress that secure, nondiscriminatory verification systems are in place.

Second, employers should not be penalized for employing aliens who become unauthorized after the date of hire. This imposes a responsibility not only of verifying alien status at the time of hire, but of monitoring on a continuing basis the immigration status of the work force.

The unsophisticated employer will not know whether work authorization which has an expiration date will be renewed. If the alien is hired at all, he will be limited to seasonal work coinciding with the period of authorization.

The *Silva* case is an excellent example of INS capriciously giving and taking away work authorization. As you know, on January 31 of this year, this group lost legal status once again. Under these circumstances, an employer is limited to either laying off a worker pending a new grant of work authorization or, more likely, refusing to hire in the first place.

Third, we urge the adoption of the Hawkins amendment introduced during the last session which would require data to be kept for all applicants for a position, not just new hires. This would help protect employers and employees alike in discrimination suits.

Fourth, we recommend the development of pilot programs encouraging voluntary employer compliance. If cooperation is to be given, however, the current work force must first be legalized. Employers will then be willing to take a stricter posture toward new hires. My experience has shown that few companies are willing to purge the undocumented from their current work force.

Another key to the success of such a pilot program is the upgrading of the INS telephone verification system.

Mr. MAZZOLI. Ms. Gonzales, I just want to remind you 5 minutes has expired. Could you perhaps have another minute or so to wrap up? I think questioning will probably get into most of the areas.

Ms. GONZALEZ. Well, we do feel in conclusion the House bill is far superior to the Senate bill. We certainly hope in the Senate and House Conference Committee the superior elements of this bill are retained.

Thank you.

Mr. MAZZOLI. Thank you very much, Ms. Gonzales.

Again, let me thank all of you. I know how tough it is to compress in each one of your cases a lifetime of work into 5 minutes, but it is the only way we can proceed to get our work done.

[The complete statement follows:]

TESTIMONY

OF

JOSIE GONZALEZ

CHAIR, LEGISLATIVE COMMITTEE  
OF  
THE LOS ANGELES COUNTY BAR ASSOCIATION

BEFORE

THE HOUSE SUBCOMMITTEE ON  
IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW

WASHINGTON, D.C.  
MARCH 16, 1983

INTRODUCTION

The Immigration Section of the Los Angeles County Bar Association is happy to have been invited to testify before this Subcommittee regarding the Simpson-Mazzoli bill. As some of you know, our organization has been active in working toward a practical and fair immigration bill, a bill which will help achieve the goal of controlling immigration to this country, and at the same time preserve the traditional rights of due process and fair treatment which are the hallmarks of the American political system.

The Immigration Section of the Los Angeles County Bar Association realizes the enormous complexity of the issues involved in any reform of our immigration laws. As professionals in immigration law, we are familiar with the nature of the immigration problems confronting our country. And we come here today as specialists in this area to offer some insight into these problems, as well as some potential solutions.

TITLE ICONTROL OF ILLEGAL IMMIGRATIONPART A  
EMPLOYMENTSECTION 101  
CONTROL OF UNLAWFUL EMPLOYMENT OF ALIENS

The Simpson-Mazzoli legislation, through the drastic step of imposing employer sanctions, hopes to take a giant step toward solving our immigration problems. However, the problem of illegal immigration to the United States has been with us for many years, and as our country has grown, so has the complexity of the problem. While we support the need to gain more control over the flow of immigrants into the United States, we do not believe that the imposition of employer sanctions will help bring about this goal. On the contrary, we have serious reservations concerning the legislation as written, and we believe that it is ill-conceived in its zeal to cut off the source of jobs for unauthorized aliens.

We strongly oppose the imposition of employer sanctions before all secure verification systems are in place and employers have been thoroughly educated in their responsibilities. As the bill is currently drafted, sanctions will be imposed six months after enactment, while the verification system will not be finalized for three years. This is completely unfair to the employer, who will be expected to take an active role in verifying the work authorization of an alien. In light of the proliferation of forms used by INS to indicate work authorization, and the constant modification of these forms, it is impossible to expect an employer to become knowledgeable enough to verify an alien's status in the United States if the verification system itself will take three years to develop. Careful studies should be undertaken on such projects as a



telephone verification system and a new improved Social Security Card, and a definite system of verification forms and procedures should be in place before any penalties are imposed.

There is confusion between the civil and criminal nature of the penalties imposed on an employer, and there are no provisions spelling out the safeguards of substantive due process guaranteed all United States citizens; this raises important concerns over the burden of proof required in any proceedings against an employer, and the right to a jury trial by an employer who contests criminal charges against him. These provisions need to be studied more carefully, and the line between civil and criminal prosecution clearly defined, so that all actions against an employer under these provisions are consistent with established civil and criminal procedures.

As a practical matter, Congress must ask if it is prepared to pay the enormous financial cost of employer sanctions. The cost of searching out violators alone would be prohibitive; and to this must be added the potential expense of detaining and housing the alien witnesses necessary to government prosecution of an employer under this law. When Canada enacted an employer sanctions law, it was forced to limit prosecutions, for the cost of providing housing for alien witnesses coupled with the cost of repeated litigation proved to be prohibitive. (Report by the U.S. General Accounting Office, Information On The Enforcement of Laws Regarding Employment of Aliens In Selected Countries, Appendix I, Page 4, August 31, 1982) In this era of strained budgets and personnel shortages, the financial cost of imposing employer sanctions must be seriously considered.

The discriminatory potential of this provision has been well-

publicized by civil rights groups and other experts in the field. The House debate on the bill brought out some very real concerns over the implications of employer sanctions, including the question of how to prove that discrimination has (or has not) occurred. Under the amendment proposed by Representative Hawkins, all applications for employment would have to be kept for a position filled; this would have protected both the employer and the employee in alleging or defending against charges of discrimination, and this benefit would have outweighed the extra paperwork burden. The amendment was soundly defeated amid warnings of potential abuse through INS access to the forms. This problem could be resolved, however, by disallowing INS access to these records.

Congress has tried to guard against discrimination by providing for the monitoring of employer sanctions by the Civil Rights Commission, the Equal Employment Opportunity Commission, and the Attorney General. However, these agencies are unable to meet the current demand for investigation of discrimination charges, due to staffing shortages and budget cuts. (Congressional Record, House, December 17, 1982, H10242) It is not realistic, in terms of successful monitoring, to place on these agencies the enormous burden of handling the discrimination investigations which will be engendered by employer sanctions.

We believe that Congress must look realistically at what it can accomplish through this legislation, and balance the potential success of employer sanctions in alleviating the problem of illegal immigration against the enormous societal costs of discrimination and financial drain.

If the goal of employer sanctions is reducing the employment of illegal aliens with a view to putting more Americans to work, then employer sanctions will not accomplish that goal. Any solution to this problem must take into account the larger social and economic factors present in our society and abroad which have helped bring about this problem.

Employers have stated time and again that it is difficult if not impossible to hire enough American workers to fill their lower-level job needs. Jobs that pay minimum wage or that offer no upward mobility do not attract enough U.S. workers. As just one example, following INS' Operation Jobs in 1982, television cameras focused on the long lines of American workers waiting to fill the jobs of aliens rounded up in massive sweeps. Followup studies of the factories raided, however, revealed that only a small percentage of the U.S. workers hired had remained on the job longer than a few weeks. As practitioners in this area, we have seen the same principle at work in the labor certification process. At the lower-level production jobs, there are few or no referrals from the Employment Development Department; unemployed U.S. workers are not applying for these jobs.

The problem of unemployment and illegal aliens has its roots in deeper social and economic problems. Americans are woefully untrained for such shortage occupations as machinist and tool-and-die maker. Time Magazine, in a study of the skill shortages in American labor today, commented that "at a time when one in thirteen U.S. workers is unemployed, jobs by the hundreds of thousands in many of the economy's most vital sectors are going begging for the lack of trained people." (July 6, 1981). The trend in recent generations has been away from vocational training and toward liberal education; fewer and fewer workers are willing

to spend the long years of training necessary to become qualified for these positions. Industry has turned to foreign labor to survive; in the long run, however, the U.S. will not be able to maintain its industrial or defense superiority if it cannot train and maintain an adequate work force. The U.S. Department of Labor has estimated that until 1990, an average of 31,000 skilled labor positions will open up each year, but that only 2,300 new workers will qualify for these job per annum. (Time Magazine, July 6, 1981)

From this perspective, it is clear that penalizing employers for hiring illegal aliens will not solve the problem of unemployment. As long as U.S. workers are not available or willing to perform certain jobs, there is minimal displacement. If employers cannot have access to a skilled labor pool, industry will not be able to operate. A more productive answer to the problem of unemployment lies in increased funding for job training programs that would give Americans the necessary skills to fill the available jobs.

The economic problems faced by American industry also contribute to the problem of employment of illegal aliens. American manufacturers find it impossible to remain competitive while paying the comparatively high prevailing wage required here. The problem of competing with foreign industry and its low wages is a very real one, as witnessed by the increasing exodus of American manufacturers to foreign shores, where they can produce the same products for a fraction of the labor cost. Realistically speaking, it is unlikely that the problem of employing illegal aliens will be solved as long as the discrepancy between American and foreign wages forces U.S. production to relocate abroad or hire workers at home at substandard salaries.



Given the broad social and economic ramifications of this problem, it is not realistic to expect that the imposition of employer sanctions will solve it. We agree that something must be done about the problem, but it does not make sense to institute such a drastic program of penalties, with such potential for large-scale discrimination, when its effectiveness will be so limited.

We urge Congress to reassess its goals in light of the above considerations, and to take a more realistic approach to the problem. Existing mechanisms are in place which, if modified or enforced, could significantly deter the employment of illegal aliens. Existing labor laws could be enforced; the Social Security Card is currently being revised to show work authorization, which will make it easier for an employer in the hiring process; economic incentives could be offered to employers to reduce the attractiveness of employing foreign workers; intensive job training programs could give Americans the skills to qualify for jobs presently held by foreign workers; these are just a few examples of how the government and employers can work within the system to reduce the employment of illegal aliens and help solve our own unemployment problem.

We urge Congress not to act hastily in its zeal to control illegal immigration. Careful studies need to be conducted on the real impact of foreign (including unauthorized) employment of aliens in the United States, and attention should be paid to the failure of employer sanctions in every other country that has attempted to impose them. Existing mechanisms should be explored to the fullest extent possible and thorough studies should be conducted to develop an optimum identification system. The end result will be more effective, as well as more palatable to all concerned: employers, minorities, and the American public.

PART C  
ADJUDICATION PROCEDURES AND ASYLUM

SECTION 121  
INSPECTION AND EXCLUSION

We believe it is unnecessary and potentially chaotic to allow any immigration officer to challenge a favorable decision on admission of an alien to the United States. This provision would create a double jeopardy situation which would be unfair to an alien seeking admission, as well as to the officer making the determination. Assuming competence among the officers who decide whether an alien should be admitted at a port of entry, there should be no reason for allowing any other INS officer to challenge that decision.

SECTION 123  
JUDICIAL REVIEW

We appreciate the desire of Congress to speed up the appellate procedure; however, thirty days is simply not enough time in which to retain counsel and properly prepare a case following issuance of a final order of deportation. A more reasonable provision would be to allow thirty days in which to file a notice of intent to appeal a final order of deportation, and sixty days from the filing of the notice in which to file the completed petition for review. This would still speed up the appellate process, yet allow adequate time for an alien to retain counsel and prepare a case.

With regard to avenues of judicial review available, there is a need for clarification of the language contained in section 123(b) of the bill, which seems to indicate on one hand that habeas corpus review is available to aliens in custody, and on the other hand that there is no judicial

review of any proceedings connected with reopening or reconsideration of a case. This apparent contradiction needs to be resolved, and the avenues of judicial review clearly set forth.

SECTION 124  
ASYLUM

We support the elimination of State Department review of asylum claims before adjudication. In many cases there is an inherent conflict between the State Department's duty to protect foreign policy and its duty to objectively support human rights concerns. The State Department should be allowed to give an advisory opinion in those cases where it believes comment is necessary, but this can be done through an opinion submitted to the court at the time of hearing, as is the procedure in similar situations.

We also support the adjudication of asylum applications by specially trained administrative law judges, who would be more impartial and better able to decide the merits of a case than INS officers, as the Senate has proposed.

TITLE II  
REFORM OF LEGAL IMMIGRATION

PART A  
IMMIGRANTS

SECTION 201  
LABOR CERTIFICATIONS

The Immigration Section of the Los Angeles County Bar Association wishes to express its grave concern over the proposed changes in the labor certification provisions. While we applaud the goals of streamlining the current labor certification process and eliminating U.S. dependence on

foreign labor, excessive Congressional zeal in these areas could result in substantial hardship to the business sector.

We strongly urge that section 201(a)(b) of the bill, precluding a labor certification if U.S. workers can be trained "within a reasonable amount of time," be eliminated from the bill. This would put unreasonable demands on employers, and ignore the realities of business: when a skilled machinist is needed, for example, it is impractical and unreasonable to require that the employer spend years training an unskilled worker for the position. If an employer's immediate need is for productive personnel, in most occupations it would not be economically possible for him to delay the hiring of skilled personnel while he trains unskilled workers. This training provision would only be feasible in lower-level jobs where unskilled workers could be trained within a reasonable amount of time.

The concept of training U.S. workers to fill skilled positions is a sound one--however, with the reduction or elimination of many government-funded training programs, the entire burden is being shifted to employers; and in these times of inflation and recession, with the closure of many small and large companies, it is simply not reasonable to place a further economic burden on all employers.

We feel that this training requirement should be deleted from the bill; at the least, the ambiguity as to what constitutes a "reasonable" period of time to train U.S. workers should be eliminated through the insertion of a three-month time limit.

Our second concern relates to the mandating of job recruitment on a national basis, ignoring the distinct variations in regional job markets. It also erroneously assumes a large-scale willingness to relocate, when in fact the vast majority of the work force has neither the willingness nor



the resources to uproot their families and relocate to a different part of the country.

Finally, the potential elimination of individualized labor certifications poses serious problems for the many specialized or unique positions not likely to appear on the expanded Department of Labor schedules. Recognizing that the elimination of individual certifications may arise out of concern over the high costs involved in the certification process, we recommend the imposition of a reasonable user fee for individual labor certifications. This would enable employers to obtain determinations on an individual basis without creating an excessive financial burden on the system.

PART B  
NONIMMIGRANTS

SECTION 211  
H-2 WORKERS

The legislative history of the H-2 provision reveals that it was originally intended primarily to facilitate the entry of seasonal agricultural labor, although there is no indication that it was to be restricted to agricultural workers. The Select Commission reports of 1980 and 1981 contain in-depth studies of various reform measures and programs intended to either liberalize or restrict the H-2 provisions.

However, each of these studies, in contemplating the application of the H-2 program to industry, focuses on its impact on the lower-level, non-skilled positions. From this perspective, the main concern was that a liberalized H-2 program would cause disruption in the American labor market by using cheap foreign labor at these lower-level positions, thus reducing the number of U.S. workers either hired or trained. It was also

feared that a liberalized H-2 program might lead to the dependence of American industry on foreign workers to the detriment of the U.S. labor market.

These are legitimate concerns, and we agree that American industry should not be dependent on foreign labor. However, a significant aspect of the industrial use of the H-2 visa has been left out of these considerations: that is, the urgent need for skilled temporary workers at positions which are in acute shortage in the U.S., such as die sinkers and machinists.

"It is well-known that American industry is suffering from an increasing shortage of skilled workers in jobs that take years of training and apprenticeship." (Time Magazine, July 6, 1981) The reasons for this shortage are varied, and include the reduction of private and government-funded training programs, as well as the social changes that have made vocational school less socially acceptable and a liberal arts education more prestigious.

The end result, however, is that for the past decade American industry has found it increasingly difficult to meet its manpower needs. And in this age of increased military preparation and the attendant production set-up, there is a real crisis situation in industry. There is an urgent need for die sinkers, tool makers, machinists, and a host of other jobs which require extended training and apprenticeship, for which U.S. workers simply cannot be trained immediately. Currently, an H-2 employer must obtain a labor certification to prove that a U.S. worker is not being displaced. This provision should continue to apply to H-2 workers, as a built-in way of protecting the American labor market.

Recently, Southern California companies have encountered great difficulty in obtaining temporary labor certifications for skilled workers. The difficulty stems from the confusion over the "double temporary" requirement in the H-2 classification which does not exist in the other non-immigrant sections, H-1, H-3 and L-1. It seems logical that the H-2 provisions conform with the H-1 visa which is reserved for alien professionals, since the temporary need for skilled industrial workers is equally as important as the need for a professional worker.

#### SECTION 212

##### STUDENTS

Our committee is greatly concerned over the possible loss of much-needed professional, scientific, and technical skills should all students be forced to depart the U.S. upon completion of their studies to fulfill a two-year foreign residency requirement. We support the liberalization of the student provision in the bill, but we believe that the waiver of the two-year requirement for graduates in scientific and technical areas should be mandated, rather than left to the discretion of the Attorney General, "if the Attorney General determines that the waiver is in the public interest". This broad discretion leaves room for arbitrary decision making involving burdensome petition processing. The potential for U.S. displacement in the labor market would be eliminated by allowing blanket exemption from the requirement to students who obtain a labor certification and thus prove that no U.S. workers are available.

Students who are immediate relatives of U.S. citizens should also be exempted from the two-year foreign residency requirement, avoiding the necessity of applying for a waiver and relying on the discretion of the

Attorney General. There is no need for a discretionary determination in this category since an adverse judgment would be contrary to the goal of family reunification.

We object strongly to the provision calling for sunseting the waiver after six years. The skills and talents of many of these students are urgently needed in American industry, technology, and science. Precluding all students from adjustment of status after 1989 will deprive the American labor market of badly needed skills for which Americans are not presently being trained. If students with degrees in the scientific and technical fields and business are allowed to adjust status, however, we will be adding a pool of highly skilled professionals to our labor force.

In our discussion of employer sanctions, we mentioned the trend away from vocational studies and toward liberal education. In our universities, one sees the same trend away from technical areas into liberal arts. The result has been a shortage of professional personnel in almost every technical field, including engineering and computer science, and this shortage will continue in the foreseeable future. It is unwise to arbitrarily cut off adjustment of status to those professional graduates who may be needed in the future, especially since these graduates will have to obtain labor certifications in order to qualify for permanent residence, and thus will not displace any U.S. workers.

We recommend that, rather than sunset the waiver automatically after 1989, Congress begin now with studies on the impact of foreign students on the U.S. labor market, and carefully evaluate the needs of American industry with respect to graduates in the scientific, technical, and business fields. We also recommend that before cutting off a source of



needed skills, significant steps be taken to refocus American education on areas of study which will eventually produce professional personnel to fill these shortage areas.

Finally, there is considerable confusion in the language of section 212(d) of the bill. Subsection (1) states that the waiver provisions apply only to those students who enter the United States after enactment of the bill. Subsection (3) specifically exempts students already present in the United States on enactment from the provisions related to time accrued for suspension of deportation. Yet subsection (2) states that the section 245(c) bar to adjustment without a waiver applies to aliens "without regard to the date the aliens enter the United States". This would seem to imply that no student in the U.S. at the time of enactment would be able to adjust status, since he would not have a waiver. This is clearly inconsistent with the rest of this section. If Congress intended to favor students entering after enactment, the provision is unfair to those students already present in the U.S. If this was not intended, the language of the bill should be clarified.

SECTION 301  
LEGALIZATION

The Immigration Section of the Los Angeles County Bar Association supports the retention of a legalization provision in this bill. Legalization will enable aliens to "clean the slate" and help employers to abide more successfully and willingly by an employer sanctions provision.

We do, however, urge that the registration period be lengthened from one year to eighteen months, for administrative reasons. We also urge that the residency requirement dates be as generous as possible, in order to make the provision as effective as possible in solving the problem of a

large pool of aliens living and working in the United States without authorization.

#### CONCLUSION

The Immigration Section of the Los Angeles County Bar Association feels that this legislation as written will not solve the problems it is intended to solve. As we have tried to emphasize in our presentation, the problems of illegal immigration to the U.S. and employment of illegal aliens are intertwined with broad social, economic, and political issues. It is impossible to expect a solution from one piece of immigration legislation until the problems of inadequate training of U.S. workers, competition with foreign industry, and the unstable world political situation are resolved. All of these factors contribute to the attraction of foreign nationals to the U.S. and the ease with which they find employment here.

Given the complex nature of the problem and severe budgetary restraints, it is unwise to enact such potentially discriminatory and financially draining legislation. There are significant constitutional problems with employer sanctions, in addition to the practical problems of funding and enforcement; and the rest of the bill seems designed to eliminate or drastically reduce the number of foreign workers in the U.S., without taking into account the fact that there might be insufficient U.S. workers fill these jobs if this occurred.

It is our position that there are alternative ways to attack these problems, and we have presented a few of our own suggestions in this paper. If concerted efforts were made to solve these problems through existing mechanisms, real progress could be made without engendering the practical and constitutional problems posed by the Simpson-Mazzoli bill.

Mr. MAZZOLI. Mr. Shattuck, if you would take the microphone, thank you very much.

Mr. John Shattuck, who is the national legislative director of the American Civil Liberties Union, is welcome and recognized.

**TESTIMONY OF JOHN H. F. SHATTUCK, NATIONAL LEGISLATIVE  
DIRECTOR, AMERICAN CIVIL LIBERTIES UNION**

Mr. SHATTUCK. Thank you very much, Mr. Chairman.

Let me take this occasion to commend you for your outstanding leadership in the effort to develop a sound and humane immigration policy in the United States. We are well aware how difficult this issue is. You have been fair and open to new ideas, and we know you will continue to be open to new ideas and fair. I think you are leading this debate in a constructive direction.

Mr. MAZZOLI. Thank you very much. I appreciate that.

Mr. SHATTUCK. We believe that this year, as we did last, that it is urgent to seek to develop a national consensus on legislation which will in fact deal with the problem of millions of undocumented workers and which will do so in a way that is consistent with our national commitment to equal protection of the laws, nondiscrimination, and respect for human civil rights.

We think that it is appropriate this year particularly to take a fresh look at a whole situation, given the tremendous controversy and difficulty surrounding it last year. We have certainly done that ourselves, and we started by taking a fresh look at the crucial issue of legalization.

We think that it is essential that the legalization and the broadest possible legalization that can be developed be put into law. There are only two alternatives to an effective legalization program as you know, Mr. Chairman.

The first is to do nothing. This would mean that we would continue to have a whole underclass in this country of people who are here who should be able to exercise their rights and live under the Constitution who wouldn't be able to do so.

The second option is to identify and to apprehend and deport all or as many undocumented aliens as possible. The consequences of that are so horrendous, it has not been seriously proposed.

The third option, of course, is an effective and generous legalization program. We view the enactment of such a program as one of the most urgent tasks facing the Congress, spelled out in more detail on some of the details on that.

But we recognize, Mr. Chairman, that any legislation which provides for legalization and amnesty must as a practical matter contain provisions to curtail the flow of illegal immigration. We are committed to working with you to achieve that goal.

In the past, as you know, we have opposed the employer sanctions provisions in the legislation, and we must continue to oppose the procedures that are set forth in the bill today. We do so on the grounds that they would lead inevitably in our view to discrimination as you have heard from many witnesses in some Americans because they would almost certainly lead in addition to a national identification card system or some employment data bank with serious civil liberties consequences.



This issue cannot be put under the table. We know in a sense it is deferred 3 years down the road, but it is really before the committee now.

The sanction system, in our view, in the bill right now—I stress the difference between that and what might be adopted—is frankly so sweeping that it will be impossible to enforce. It will in our view and the view of many others lead to confusion among employers and law enforcement officials and will result in substantial discrimination against Hispanics and other racial and ethnic minorities in the workplace.

The most important factor of all and the new issue that we would like to bring out in this context is that it is really illusory to think that the existing laws against employment discrimination are of sufficient nature for the employer sanction systems that are set forth in the bill. There are really three reasons for this.

Title 7 of the Civil Rights Act applies only to employers of 15 or more employees and individuals employed for 20 months or more.

The second reason is that the backlog and processing of title 7 complaints within the EEOC, coupled with present budgetary restraints is really making that situation almost intolerable in terms of seriously considering that as a way of fighting discrimination.

The third, of course, is that for individuals, civil rights litigation can be, as we are all well aware, tremendously expensive, tremendously difficult to prove. To bring a case under title 7 is not going to be a very easy thing to do after discrimination results in this context.

Let me say—and I don't want to take a lot of the time of the subcommittee, Mr. Chairman, by going into this in the kind of detail that I do because we are taking a fresh look at it, and we are taking a fresh look at it by bringing together employment law experts—we and a large number of others who are interested in this field to ask them to take a look at what is in the bill now and to see whether something as an alternative could be developed which would solve the problem to the extent that it would curtail the flow of illegals into the country at the same time as it would not lead to the kind of discrimination that we see in this system.

We have set forth some of our views on that in the prepared statement. Basically, we urge that a pattern of practice approach toward sanction system be adopted. Under this approach, it would be unlawful for employers to intentionally hire undocumented workers, but there would be at the front end no general requirement for the Government or employers to expect a new special, secure, form of identification.

The extent that a group, an employer, was cited for a pattern of practice of illegal hiring, that employer would then face a reporting requirement to the Government with respect to all new hires. If that reporting requirement were violated or if discrimination occurred in that employer's workplace, then tough penalties would be very appropriate, and it is at that stage we think the employer sanction system, if it is to be available at all, should begin to be considered.

I won't go into the situation in any more detail. I would be delighted to answer your questions on that. But let me just in 30 seconds, because I know the 5 minutes is almost up, cite the third



major issue in the bill from our perspective. That is, as you well know, Mr. Chairman, the question of adjudication, particularly in the asylum area. Here, of course, we commend you for the real difference that exists in your bill as opposed to the Senate bill.

You have worked very hard to develop a scheme which is fair to the human rights people who are facing questions of political asylum in this country.

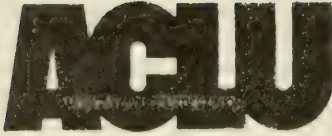
On the other hand, we think there are several areas which are important, particularly with respect to the Haitian case that you heard about this morning in so powerful a fashion. It is necessary to have a pattern of practice of adjudication right when there is such a horrendous violation of human rights as occurred in those Haitian cases.

It is not appropriate to force each of those individuals to go through the whole process finally after a deportation order is issued, then perhaps to have access to the Federal courts. Those are few cases in number, but extremely important in our perspective in terms of preserving human rights in this area.

Thank you again, Mr. Chairman. Your patience, your tireless efforts to accommodate so many points of view here is really appreciated by us. We look forward to continuing to work with you on it.

Mr. MAZZOLI. I thank you very much, Mr. Shattuck. I accept that statement and those compliments really on behalf of the full subcommittee. They have been equally patient and equally devoted and hard-working. It is really a collegial effort. We thank you for having noted it, though.

[The complete statement follows:]



WASHINGTON OFFICE

STATEMENT OF

JOHN H.F. SHATTUCK, NATIONAL LEGISLATIVE DIRECTOR

WADE J. HENDERSON, LEGISLATIVE COUNSEL

E. RICHARD LARSON, NATIONAL STAFF COUNSEL

AMERICAN CIVIL LIBERTIES UNION

on

THE IMMIGRATION REFORM AND CONTROL ACT OF 1983

H.R. 1510

before

THE SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES AND INTERNATIONAL LAW

THE JUDICIARY COMMITTEE  
HOUSE OF REPRESENTATIVES

March 16, 1983

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Mr. Chairman and Members of the Subcommittee:

We appreciate the opportunity to appear before this Subcommittee to present the views of the American Civil Liberties Union on the question of immigration reform legislation. The American Civil Liberties Union is a nationwide, non-partisan organization of more than 275,000 members, devoted solely to protecting and enforcing the Bill of Rights.

Mr. Chairman, we want to take this opportunity to commend you for your outstanding leadership in the effort to develop a sound and humane immigration policy in the United States. Your fundamental fairness and openness to new ideas have been instrumental in guiding the national debate on this far-reaching and complex issue in a constructive direction.

The debate on the floor of the House of Representatives last year makes clear, we believe, that the immigration issue arouses intense passions from many directions, and that immigration reform could have a profound impact on the nature of our society. We believe that it is urgent to seek to develop a national consensus on legislation which will in fact deal with the problem of millions of undocumented workers and which does so in a way which is consistent with our national commitment to equal protection, non-discrimination, and respect for human and civil rights.

In the past, the ACLU has opposed specific legislation because we believed that the employer sanctions provisions posed a threat to civil liberties, would inevitably lead to discrimination in hiring, and would be unenforceable. We have also objected to the provisions relating to political asylum because

we believed that they would have violated the due process rights of those seeking political asylum and were not consistent with our treaty obligations.

Mr. Chairman, we hope that all of those involved in this process will be willing to take a fresh look at this problem to see if solutions can be found which meet the objectives which we all have.

In taking our own new look at this issue we have focused on the importance of legalization for the protection of civil liberties. There are only two alternatives to an effective and humane legalization program and both of them pose unacceptable costs from a civil liberties perspective.

The first option is to do nothing. This would mean that we would continue to have in the United States millions of people who should be entitled to the protection of the Bill of Rights but unable to enjoy those rights. Those who are here without the documentation required by current law are unable to vote or to otherwise participate in the political process; they are unable to call upon the government or the courts to protect them when their political or civil rights are violated by the government, by their employers or by others; they are unable to organize effectively through labor unions and other associations. The ACLU views the continuation of this situation as an intolerable limit on the protections to which all persons in the United States are entitled under our Constitution.

The second option is to seek to identify, apprehend and deport all or most of the undocumented individuals now living



in the United States. The consequences of such an effort are so horrendous that it has not been seriously proposed. Finding the individuals to deport would require a process of intrusion into the lives of many Americans and would inevitably result in violation of constitutional rights. Moreover, it would be unjust and inhumane to seek to deport individuals who have been productive and law-abiding members of the community.

Thus we are left with the third option which is an effective and generous legalization program. The ACLU views the enactment of such a legalization scheme as one of the most urgent tasks facing the Congress. We believe that such a program must be consistent with the following principles:

1. All aliens who have continuously resided in the United States since January 1, 1982 should be eligible for the legalization program;
2. all aliens eligible for legalization should be granted permanent resident status and the temporary resident provisions of the bill should be deleted;
3. all legalized aliens granted permanent resident status should be granted the full rights and privileges accorded permanent resident aliens under current law;
4. state and local governments should be provided impact aid, pursuant to an appropriate formula, to assure that the legalization program does not unfairly burden state and local taxpayers in certain areas of the country; and
5. that persons eligible for the program be granted one year from the beginning of the program to apply to legalize their status.

We are prepared to work with this Committee and others in the Congress for the speedy enactment of legislation which embodies these principles. Mr. Chairman, we recognize that any legislation

which provides for legalization must as a practical matter contain provisions which would deter employers from simply continuing to hire new undocumented workers.

In the past the ACLU has opposed the sanctions provisions contained in the legislation and we must continue to oppose such procedures. We do so on the grounds that they would lead inevitably to discrimination against some Americans and because it would almost certainly lead to an employee identity card with serious civil liberties consequences. We also believe that the arrangements which have been proposed in the past will simply not work. Those employers who are engaged in the practice of hiring undocumented workers will, we believe, continue to do so. We urge the Committee to consider carefully the evidence as to the effectiveness of this scheme. It is not sufficient to say that sanctions are necessary. A system which will not accomplish its purposes and which at the same time will give rise to discrimination and pose a massive threat to civil liberties is simply unacceptable.

The effectiveness of available civil remedies for discrimination is illusory. Existing Title VII and EEOC enforcement efforts would be inadequate as a remedy for employment discrimination which may arise if the existing criminal sanctions scheme in the bill is enacted into law:

1. Title VII of the Civil Rights Act applies only to employers of 15 or more employees and to individuals employed for 20 months or more. Those applicants who suffer discrimination, but who apply for jobs with employers of fewer than 15 workers or who are seasonal employees, will have no effective remedy available;
2. The backlog in processing Title VII complaints within the EEOC, coupled with present budgetary constraints on civil rights enforcement by the Justice Department, will invariably affect the willingness of aggrieved persons to utilize the system, which, at best, will be protracted over many months;
3. For the individual, civil rights litigation can be cost prohibitive. Recent cutbacks in the budget of the Legal Services Corporation, coupled with congressional restrictions on the representation of aliens, will make for greater difficulty in pursuing judicial remedies.

We respectfully suggest that the Committee look to alternatives.

A new approach which we believe merits attention would focus on those employers who engage in a pattern and practice of hiring undocumented workers. Under this approach, it would be unlawful for employers intentionally to hire undocumented workers, but there would be no general requirement for the government to develop--and employers to inspect--a new secure form of identification. Rather, enforcement would center on firms found to engage in a pattern and practice of intentionally hiring undocumented workers. Any employer cited for such violations would then be required to report any new hiring to the government. Responsibility for enforcing the law would not rest with the INS but rather the officials having experience in enforcing employment laws. This unit would be also charged with insuring that enforcement of the law did not result in unlawful discrimination.

This approach would have the virtue of focusing the immigration enforcement effort on large employers with a clearly established record of employing and exploiting undocumented workers. It would thus eliminate the incentive for all employers to "play it safe" by discriminating against "foreign-looking" workers, and it would encourage large employers to comply with fair labor standards laws in order to avoid being targeted for close scrutiny as a suspected exploiter of undocumented workers.

The ACLU has asked a group of employment discrimination experts to work with us and other interested groups to see if this approach can be translated into a scheme which will actually accomplish the objective and do so without giving rise to discrimination or to a worker identification card. We hope that the Committee will not move forward so quickly as to foreclose careful consideration of this approach.

Finally, there is the issue of asylum adjudication. First, the number of undocumented immigrants in the United States today is estimated to number between 3.5 to 6 million or more. The backlog of asylum cases is 140,000--a very small percentage of the total undocumented population, assuming that all asylum claimants are in the United States, "illegally," eliminating the entire asylum backlog would hardly make a dent in the number of illegal immigrants in the country.

Second, court cases appealing or challenging administrative determinations and procedures are not responsible for the current backlog. As the House Judiciary Committee Report last year concludes:



"The Committee is convinced that the abolition of judicial review of asylum determination would be unwise. Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases. . . . Today, it takes the State Department four months to respond to an INS request for a country condition report. In turn, over 70,000 asylum petitions are currently awaiting decisions by INS. Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases challenging exclusion or deportation orders. And of course, the vast majority of those court cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts."

We believe that the administrative scheme which was embodied in the bill as reported by the House Judiciary Committee last year is a good one which commands wide support. We urge the Committee to give it careful consideration. In addition, we believe that, consistent with the Refugee Act of 1980 and the international treaty obligations of the United States, those who arrive at our shores must be informed of the right to counsel before they are summarily deported. We also believe all existing rights of judicial review must be maintained, including the right of the district courts to hear allegations of pattern and practice violations by the INS without exhaustion of administrative remedies.

We must bear in mind that we are dealing often with poor and confused and frightened people who arrive on our shores without any clear knowledge of their rights. In our haste to deny entry to those who are excluded by our current laws we must not send away those who are genuinely fleeing from political persecution.

Mr. Chairman, attached to this brief statement are three memoranda spelling out our positions on legalization, sanctions, and political asylum in greater detail. We would be pleased to respond to your questions and we look forward to working with you, other members of the Committee and your staffs in seeking to develop a consensus on the vital issue of immigration reform.

Mr. MAZZOLI. Next on our chart list is Mr. Robert Juceam, president of the American Immigration Lawyers Association.

Mr. Juceam, you are recognized for 5 minutes, and welcome.

**TESTIMONY OF ROBERT JUCEAM, PRESIDENT, AMERICAN  
IMMIGRATION LAWYERS ASSOCIATION**

Mr. JUCEAM. Good morning, Mr. Chairman, and members of the subcommittee.

I would start by joining with my colleagues in expressing our appreciation to be invited to be with you this morning and to have participated over the last year and a half with you and members of the subcommittee and the staff.

As the committee knows from our prior statements, both submitted in writing and testimony, there are a large number of areas in very broad brush where we disagree. I would like to limit my remarks, however, this morning to those new thoughts that have emerged as we have looked at the experience last year and with the positions that have come to our attention since.

Therefore, I am not going to speak about employer sanctions in any detail or other topics as my statement reflects. The first thing I would like to call to your attention is that when the House Report No. 97-890 on the bill as it was in the last Congress came out, at pages 54 and 55, there was less than 1 page of text on two subjects which occupy the heart of the written presentation which I ask be added to the record.

Mr. MAZZOLI. Without objection, all the statements will be in the record.

Mr. JUCEAM. Mr. Chairman, we have one or two typographical corrections. We expect by the end of the week to submit a clean copy that won't have those.

But on the issue of adjustment of status and the new bar that would be applicable to it for persons who are not in legal immigration status on the date of an adjustment application and on the issue of labor certification changes for the immigrants, the two paragraphs that appear here in my judgment reflect the very scant testimony and evidentiary record that has been created with respect to the changes that are being proposed in the bill.

The burden of my remarks this morning on the labor certification issue is to ask that this committee defer in this bill any change to the labor certification provisions for immigrants. I do that on the assumption as we have been told that this bill is but part of a broader consideration of a major reform of the immigration laws. It is the intent of this committee and the committee in the Senate to propose and have introduced an omnibus bill sometime this spring or summer which would deal with the remaining parts of the Immigration and Nationality Act.

On that assumption, let me suggest to you that the present proposals to so-called reform legal immigration hardly begin to touch the surface with respect to the actions and performance and record of the Secretary of Labor. As you know, aside from the Department of State and the Attorney General, the Secretary of Labor under section 212(a)(14) has a very significant role and has developed multitudinous regulations, sometimes enacted only with public com-

ment after courts have instructed the Secretary the Administrative Procedure Act is applicable to the development of his rulemaking.

Our problems with the Department of Labor and the Secretary with respect to the changes in labor certification you propose are two:

First, many of the deficiencies we note in my prepared statement are not addressed by this bill at all.

Second, insofar as this bill addresses them, we perceive it not as a meaningful change that will streamline and make the system efficient, but that it will reflect the administrative convenience of the Secretary not to have to go through the kinds of analyses that we think are central to an adequate evaluation of the American labor market and the needs of employers for alien labor.

Because we think it neither addresses the major problems that the Department of Labor and the Secretary have posed in this area, and because we perceive that it will not meet the stated objectives of streamlining and efficiency, we think that this committee ought to take a full look on an adequate record of the issues that we pose.

Second, with respect to adjustment of status, there is a difference, as you know, between the Senate bill and this bill. The Senate bill would deny automatically adjustment of status to aliens who have failed to maintain their status in the United States without regard to the kind of failure to maintain or the time when they fail to maintain.

The current version of this bill before this subcommittee simply requires on that absolute provision that the alien not be in legal immigration status at the date of filing the adjustment application.

However, the House report doesn't say that. The last sentence of the House report which had the same language as this bill last year says, "This bill further limits the privilege to aliens who have maintained their nonimmigrant status while in the United States."

Perhaps in the drafting of the commentary, the difference in the statutory language as reported last year by the full committee was not noted. But even in use of the term "maintenance of legal status," there is a concept of persons who are out of status who have surrendered and are under docket controls and, therefore, for lots of purposes are treated as if they were in legal status.

However, I believe the way the status now reads, may be read by the administrator afterwards in the administrative regulations as requiring that the alien have in fact achieved status rather than be eligible for either lawful immigration status or adjustment or voluntary departure.

Now, those concepts, while they may be technical, affect broad and butter issues for the large number of persons who are involved in the deportation process. I believe the commentary of this bill or its language should be reflected to keep those points in mind.

Mr. MAZZOLI. I thank you very much, Mr. Juceam.

The time has expired, but it certainly was the intention of the subcommittee that the individual if he or she fell out of status, but was back in status at the time the adjustment was sought, would be OK. But we would certainly give some attention to liberalizing and adjusting the language.

Mr. JUCEAM. Mr. Chairman, may I add there is a point I wanted to dwell on, but I have not heard this morning or seen in the other presentations, and I hope perhaps it will be part of you questioning, but I would like to see if we could spend 1 minute after Mr. Ervin is finished with his remarks considering the possibility of employer sanctions having a sunset provision.

Mr. MAZZOLI. Thank you.

We have talked about that at different times.

[The complete statement follows:]





Mister Chairman and Members of the Subcommittee:

I am Robert E. Juceam, a member of the law firm of Fried, Frank, Harris, Shriver & Kampelman. This year, I serve as President of the American Immigration Lawyers Association ("AILA") and am pleased to represent it this morning in commenting on H.R. 1510. Thank you for inviting us.\*

The importance of immigration reform clearly warrants your Subcommittee's hearings early in this Session on the central proposals Chairman Mazzoli and others have diligently pressed in the House. Though there are many divergent, strongly held views on these matters, public debate and comment serve to sharpen legislative analysis and aid in refining broad political judgments. I hope you find our comments this morning useful in that process.

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\* The American Immigration Lawyers Association was founded in 1946 as the Association of Immigration and Nationality Lawyers. AILA objects are: "to advance the jurisprudence and the administration of law pertaining to immigration, nationality and naturalization; to promote reforms in the law pertaining thereto; to facilitate the administration of justice; and to elevate the standards of integrity, honor and courtesy in the legal profession." AILA is presently comprised of over 1,500 attorneys with special interest in immigration and nationality law. It is organized nationwide into 26 local chapters, plus At-Large Members. AILA is governed nationally by its Board of Governors, which includes the National Officers, Past Presidents, elected Directors and Chapter Chairpersons. AILA's National Office is located at 1000 16th Street, N.W., Suite 501, Washington, D.C.

Because H.R. 1510 is substantially similar to the bill voted by the full Judiciary Committee in September, 1982 in the last Congress, much of our comment is already a matter of public record, has been incorporated in the prior bill or is set forth in memoranda your Subcommittee staff has received. We will, therefore, use this opportunity to bring to the Subcommittee's attention some additional views we have considered since last December and not recite broad points with which you are familiar or technical drafting matters that are beyond the aim of today's session. Further, because we are aware that others, with whom we agree, intend to comment in detail this morning on the grounds and procedures applicable to asylum claims, the independent United States Immigration Board, summary exclusion and judicial review, our focus will be on the changes proposed affecting the scope of "employer sanctions", the implementation provisions for legalization, the reform of the labor certification process for immigrants and the further limitations on adjustment of status to permanent residence for aliens in the United States.\*

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\* We express no views on the wisdom of the proposed amendments to the "H-2" category for temporary workers. If the proposals are to be adopted, however, we endorse the amendments in the form of the bill. We support, as drafted or with technical amendments, sections 102, 111, 112, 113, 202, 213 and 303 of the bill. We also support the absence in this bill of any change in the preference system for immigrants but urge adoption of an investor preference if any changes are to be made.

## I. Preliminary Matters

### A. Employer Sanctions

Much of the debate about employer sanctions centers on whether the adoption of sanctions will likely turn off the magnet which presumably attracts unlawful immigration to a sufficient degree to justify the risk to our civil liberties and the expected high financial cost to the public and private sectors.\*

Assuming, however, that employer sanctions are to be pursued, we believe that:

1. enactment of sanctions should be self-limited, so that after a two or three year period the provisions expire, unless reenacted after full oversight hearings, not just executive agency reports, on the costs, effects and efficacy of the sanction program; and

2. the "for a fee" provision on recruitment and referral sanctions be deleted.

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\* AILA continues to oppose the adoption of employer sanctions. See Statement of Stanley Mailman, Esq., Joint Hearings on the Final Report of the Select Commission, Serial J-97-98 at pp. 292-293, 295-297. We are unpersuaded that the costs and risks, against the likely results, warrant so radical a change in our governance. Other approaches have not been pursued in a serious and coordinated fashion. Moreover, the experience with state employer sanction laws provides some evidence that, after the spotlight of enactment, they are ineffective.



We find it anomalous, where the proponents of sanctions feel so strongly about their need and purpose, that labor organizations, which frequently provide recruitment and referral services within their membership dues structure, not for a separate fee, are exempt. The sanctions provisions in the 1976 Senate bills would have covered such referrals.

B. Legalization and Registry

AILA, not without some internal dissent, supports H.R. 1510's provisions on legalization and the updating of registry to 1973. Indeed, we regard legalization as an extension of registry, which has historic and practical roots in our immigration law. Contrary to its opponents, legalization is not a radical change in our law or inconsistent with our traditions.\*

We are, however, deeply troubled by the process under which aliens who might qualify for legalization would be encouraged to identify themselves and, within narrowly structured time limits, apply for benefits under the legalization program. Under Section 301(c)(1) of the bill, the "Attorney General shall provide that applications for adjustment of status ... may be made to and received, on behalf

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\* Some of our members have suggested updating of registry to 1981 as an alternative to legalization.

of the Attorney General, by qualified voluntary agencies, which have been designated for such purpose by the Attorney General."

As we understand it, there is some thought that, to implement this provision, (a) adjustment applications would not be made or received at INS offices and (b) the designated voluntary agencies to whom applications are made would also provide counseling services for possibly eligible aliens. Our concerns on these points, inherent in the conflicting interests of the voluntary agency role, primarily relate to:

1. Confidentiality and Privacy

- (a) An alien, ultimately found ineligible, will have no protection against adverse use of the alien's own statements in disclosures to voluntary agency personnel. Moreover, no privilege attaches to the alien's communications with agency personnel in the counseling process.
- (b) Voluntary agency personnel will not be covered by 18 U.S.C. §1905, which limits disclosures of certain kinds of information by officers and employees of a department or agency of the government.
- (c) We do not know if the Subcommittee intends that the Freedom of Information Act and the Privacy Act should apply to the information and records obtained or generated by the voluntary agencies in performance of their designated function. If so, further provisions are required in the bill.

## 2. Scope of Voluntary Agency Function

- (a) Aside from receipt of applications, the designated voluntary agencies should not evaluate or make recommendations on the merits or sufficiency of an application unless the personnel so involved are, by statute, expressly required to meet the requirements for and be designated as government officers for all purposes.
- (b) Does the Subcommittee intend that voluntary agency personnel will have the power to administer oaths and that statements made to such personnel constitute statements within 18 U.S.C. §1001?

## 3. Official Misconduct and Estoppel

- (a) Does the Subcommittee intend that any misconduct of an employee of a designated voluntary agency be treated as "governmental misconduct" under the various federal constitutional and statutory provisions and judicial decisions applicable to conduct or liability of government officials? For example:
  - (i) The Civil Rights Acts
  - (ii) The Federal Tort Claims Act
  - (iii) Fourth and Fifth Amendments to the U.S. Constitution
- (b) Does the Subcommittee intend that incorrect advice to an alien by voluntary agency personnel, even when innocently given, support an estoppel if such advice from a governmental official would do so?

4. Exclusion of Other Groups from Performing the Receipt Function

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- (a) We do not understand why the Attorney General is limited to qualified voluntary agencies for designating groups to perform receipt functions.
- (b) Other qualified public interest groups should be considered and offered similar terms of engagement.

Our criticism is not intended in any way to reflect adversely on the voluntary agencies, their historic role in the immigration process or the reference to them in the present bill. We do object, however, to the limited statutory direction given to those who will have to interpret and implement the bill in the form it now appears and the absence of express protections for aliens who deal with the voluntary agencies. And, to the extent that other federal statutes are applicable only to "agency records" or "government officers," the Attorney General will not be able effectively to provide important protections and assurances in the legalization program through regulatory enactments. We would appreciate the opportunity to work with the Subcommittee staff and other interested parties in specifically addressing these issues.

C. The United States Immigration Board

AILA supports the creation of the United States Immigration Board and the administrative law judge system for immigration judges. Two matters, we believe, warrant additional statutory attention.



1. Section 107(b)(3) provides for the United States Immigration Board to act in panels of three or more or en banc. Where it acts through a panel, "[a] final decision of such a panel shall be considered a final decision of the Board." Section 107(b)(5) makes a final decision of the Board binding on "all administrative law judges, immigration officers, and consular officers, under this Act" unless reversed or modified by a court of the United States. The bill does not address, however, the circumstances where:
  - (a) panels of the Board reach conflicting decisions and the Board, for whatever reason, has not yet or will not address the matter en banc
  - (b) a court reverses a Board decision and the Board would not follow the court's rule of law outside of the court's geographical limits and a consular or other officer has to apply a rule of decision supplied by the reversed Board decision to a pending application.
2. Section 107(b)(6) requires the Board to render appellate decisions respecting asylum applications "not later than 60 days after the appeal is filed." It provides, however, no remedy for a failure to comply with the time limitation. In view of the bill's limits on judicial review, we believe the Subcommittee should specify a remedy for noncompliance.

## II. Labor Certifications - Immigrants

Section 201(a), as proposed in the bill, would "reform" 8 U.S.C. 1182(a)(14) (INA §212(a)(14))\* in three ways:

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- \* INA Section 212(a)(14), as amended in 1976, currently provides:

"Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

\* \* \*

(14) Aliens seeking to enter the United States, for the purpose of performing skilled or unskilled labor, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that (A) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of aliens who are members of the teaching profession who have exceptional ability in the sciences or the arts), [underlined portion added in 1976] and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and (B) the employment of such aliens will not adversely affect the wages and working conditions of the workers in the United States similarly employed. The exclusion of aliens under this paragraph shall apply to preference immigrant aliens described in Section 203(a)(3) and (6) of this title, and to nonpreference immigrant aliens described in section 203(a)(8) of this title;"

The present statutory formulation was introduced into the INA by the 1952 Act which was in effect until December 1, 1965. That Act, of course, did not contain the underlined portion and had cast the requirement in terms of an exclusion "if the Secretary has determined and certified...." The 1965 Amendments changed that wording to "unless the Secretary" has made the determination and certification. AILA supports a return to the pre-1965 formulation modified in view of our experience with the current statute.

(a) by expressly authorizing the Secretary of Labor to use national labor market information without reference to a specific job opportunity in a given geographic area for which certification is requested

(b) by providing for denial of a labor certification where the applicant fails in the burden of proving that a U.S. worker cannot be trained for the position in a reasonable period of time; and

(c) in establishing a standard of judicial review less favorable to the applicant than provided under the Administrative Procedure Act.

AILA opposes Section 201 in its entirety.\* It should be deleted from the bill. Reform of the labor certification provisions, we urge, will be more appropriately considered with the expected omnibus bill to be filed later this Spring. Detailed hearings should address a thorough overhaul of the role, standards and procedures of the Secretary of Labor under the immigration laws.

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\* See Prepared Statement of Warren Leiden, Esq. before the Joint Committee concerning the Immigration Reform and Control Act of 1982, S. 2222/H.R. 5872 submitted April, 1982.

We note:

- Less than 5% of lawful immigration in the last several years has been subject to the labor certification requirements of 8 U.S.C. §212(a)(14).
- The recognized students of economics and labor relations reject use of the immigration laws to "fine tune" the U.S. labor market.
- The Secretary of Labor's regulations are burdensome, complex, little understood, costly and do not effectively control or regulate the impact of alien labor on the U.S. labor market.\* Indeed, deficiencies in the existing system, which have led the Secretary to note that it does not work, are not even addressed by the bill.
- Administration of the Secretary of Labor's standards is decentralized, inconsistent, arbitrary and often politicized.
- The bill's proposal to limit judicial review of decisions of the Secretary is misplaced. More, not less, court review is needed.
- The bill fails to expressly provide, as it should, that individual labor certifications shall be available where a particular job in a given locality cannot be filled by existing workers. No American business that requires a qualified employee should be denied the ability to hire a qualified alien unless there are actual workers available and qualified to do the work.

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\* "...[T]he current labor certification has been universally criticized as costly, cumbersome, ineffective and highly acrimonious. (Final Report (of the Select Commission), P. 138)" House Report 97-890 (Part 1) (accompanying H.R. 6514).



The training requirement, apparently applicable to all job categories for all kinds and sizes of employers and employing institutions regardless of the costs and ability to train, is unreasonable even if, theoretically, a qualified employer training program could accomplish training in a reasonable period of time.

We will discuss some of these points in the hope that the Subcommittee will appreciate the need and utility of deferring the labor certification amendments at this time.

AILA approves the use of all relevant information, including national labor market information, as part of the data base in reaching decisions under Section 212(a)(14). Indeed, such data is now frequently utilized for certain classes of occupations. It should not, however, be the sole basis for a determination or the sole ground for concluding that an applicant has failed in proving need to engage an alien.

Under Section 201(a), moreover, we believe that the Secretary of Labor could deny a labor certification for a speciality engineer on the basis of figures indicating the availability of engineers in general. Instructors in the Montessori method of instruction could be denied certifications based on the general availability of teachers. Attorneys specializing in labor law could be denied certification because of the availability of lawyers in general.

These examples are not fanciful. They reflect real

cases in which the courts of the United States rejected the Labor Department's attempt to deny labor certifications on precisely that ground. See Digilab Inc. v. Secretary of Labor, 495 F.2d 323 (1st Cir. 1974) (Engineer); Ratnayake v. Mack, 499 F.2d 1207 (8th Cir. 1974) (Montessori teachers); Romani v. Secretary of Labor, 430 F. Supp. 298 (S.D. Fla. 1976) (Attorney).

Although the Immigration and Nationality Act contains no express authority for the Secretary of Labor ("SOL") to promulgate regulations to implement Section 212(a)(14), detailed regulations were promulgated with notice of rule-making. They appear at 42 Fed. Reg. No. 12, January 18, 1980.

These regulations constituted the first comprehensive changes to the labor certification process since the 1977 regulatory amendments and provided the Secretary of Labor with an opportunity, not utilized, to streamline the process. In connection with the rulemaking:

1. No policy-oriented research was published in explanation or support of the changes;
2. No regulatory analysis under Executive Order 12044 was performed;
3. No standards were adopted or enforcement mechanisms imposed for the delays in local or regional office processing of applications;
4. Applicants were not relieved of proving "the obvious" by prophylactic rules, such as sat-

isfying issues of "availability" without additional documentation where the Regional Certifying Officer has repeatedly determined unavailability in current cases for the same job category in the same locality;

5. A "substantial compliance" rule was not generally adopted;

6. Schedule A, precertifying occupational categories for workers clearly in short supply, was not meaningfully expanded;

7. Existing industry and local recruitment standards were not accepted as, in themselves, sufficient to test or document availability;

8. No relief was provided from the requirement of a minimum salary guarantee for occupations traditionally compensated solely on commissions even if the reasonably expected amount of commissions is fully documented;

9. No reform was offered for the lack of uniformity in regional decision-making;

10. No provision was made for an evidentiary hearing on an individual application during administrative proceedings;

11. No requirement was adopted for local and regional offices to monthly (or on some other

periodic basis) publish determinations -- by job category, wage rate or otherwise;

12. Administrative law judge decisions proposed to be published were not expressly given precedential effect;

13. No practice or procedure for Secretary of Labor acquiescence in non-appealed litigated matters (either judicial or administrative) was set forth;

14. No effort apparently was made to restore a Schedule C or "blanket certification list" of occupations which would not be adversely affected by the employment of an alien -- on a local, regional or national basis;

15. A system under which the Regional Certifying Officers are not bound by the labor market findings of the State employment service was continued. No procedures were proposed, moreover, to eliminate the delays and cost burdens inherent in differences which arise between state officials and the Department of Labor. No comment or analysis was published on suggestions to abandon the state system for processing (rather than use as an information source) and to "federalize" the bureaucracy so that initial processing would



be clearly under federal control and operating instructions; and

16. No listing was made of the kinds of occupations which should not be subject to countrywide recruitment efforts. The regulations retain the Secretary of Labor's position that employers need to recruit outside the local labor market in an effort to attract American workers willing to relocate, irrespective of the position in which, or even whether, they are currently employed.

The 1980 rulemaking, which constitutes the current regulations, usefully clarified certain standards and expanded the review function. But it avoided meaningful reform while making qualifying for certification in selected categories more difficult and costly. For example,

(a) Employer preferences are now treated as "requirements", and "business necessity standards" were imposed to discourage applications or lead to their denial.

(b) The changes on Schedule A relating to employees of "international organizations" limited use of the Schedule. U.S. operations controlled by foreign entities in a "start-up" phase will not be precertified.

(c) Treaty traders and treaty investors employed less than a year abroad are no longer precertified.

(d) The costs of complying with the regulations -- in terms of out-of-pocket expense and time delay -- increased materially as the documentation requirements were made more stringent and de facto substantive standards evolved.

No regulations have been promulgated since 1980. The overwhelming record, therefore, of the Department of Labor's regulatory reform schedule since 1977 has been to rationalize the regulations; respond to specific pressures in certain occupations in certain regions with respect to their application; expand the bureaucracy of multilayered functions and reviews; and detail procedural grounds which themselves become the substance of decisions. No proposals have been published for comment to develop minimally adequate, broad scheduling of those occupations for which labor certifications, time and again, region to region, is ultimately granted routinely.

Use of national market data may inhibit, rather than facilitate, reform. It will not, in our opinion, provide a more streamlined and efficient approach. Under the present system, in the overwhelming number of certification cases, the Department of Labor has been able to make determinations

as to whether U.S. workers are "available", "willing", and "qualified" "at the place" and "at the time" of a particular job without difficulty. The authority, under Section 201(a) as proposed, for use of labor market information "with or without" reference to the specific job opportunity for which certification is requested is a welcome improvement, therefore, as long as it does not interfere with the ability of the employer to file for an individual labor certification and information unrelated to the job offer is not the sole basis for denial.\* Under the system proposed in the bill, it is possible that there will be no adequate mechanism whereby the employers can ever demonstrate within reasonable bounds of time and expense that there is, in fact, a shortage of American workers with the same skills as the foreign national and that these skills are necessary to the continued operation or expansion of the employer's business.

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\* To the extent that a major expansion of the current precertified ("blanket" or "automatic") Schedules (to include certain additional occupations with respect to which there is a chronic shortage of U.S. workers) can be achieved, it would save employers and the Department of Labor considerable unnecessary time and expense. Inevitably, however, there will be a wide variety of specializations within occupations which would not be accounted for, even in the most comprehensive of schedules. For example, we believe that the Department will concede that it cannot determine up-to-date nationwide availability of U.S. workers for a substantial portion of the 10,000 occupational titles it has identified in its Dictionary of Occupational Titles.

Finally, the bill provides that decisions of the Secretary of Labor made pursuant to Section 201(a), including the issuance and content of regulations and the use of labor market information under this section, shall be reviewable by an appropriate district court of the United States, but that the court shall not set aside such decision unless there is compelling evidence that the Secretary made such decision in an arbitrary and capricious manner.

This is a substantial narrowing of the present standard of judicial review of regulatory enactments as well as of adjudications in individual cases. Its effect, if not its purpose, is to avoid court cases that the Department of Labor has lost. It eliminates the full Administrative Procedure Act guarantees from the Secretary's procedures. Given the record of the Department's functioning under INA §212(a)(14), we find no basis for this proposal.

### III. Adjustment of Status - Immigrant

Less than eighteen months after the Select Commission recommended that the present system of adjustment of aliens in the United States to lawful permanent residence be continued, the predecessor of S.529 and now Section 131 of S.529 would prohibit such adjustment for aliens who have "failed to maintain continuously a legal status since entry into the United States." This language reverts to a similar provision in the 1952 Act which was found unworkable, caused



untold hardship and expense and was twice amended over a twelve-year period with the effect of removing the alien's status in the United States as a controlling condition to the Attorney General's grant of adjustment.

AILA is pleased that Section 131 of H.R. 1510 has not adopted the Senate bill's formulation. We urge that the Subcommittee, if adjustment is to be restricted further, retain the formulation in Section 131 of H.R. 1510.\*

We question, however, the wisdom of an automatic bar to adjustment, itself a discretionary function of the Attorney General, tied to a finding that the alien is not "in legal immigration status" as of the date of the filing of the application for adjustment. As with the bar to adjustment for those taking unauthorized employment, enacted in 1976, this new condition will give rise to considerable interpretation and proceedings. The alien may be out of status for quite technical reasons, rather than for conscious misconduct, disregard of the law, or fraud. Further, an existing condition on the grant of adjustment is that the alien have been inspected and admitted or paroled, so those who enter without

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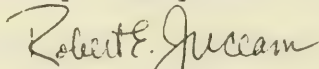
\* We assume that the Subcommittee report will make clear, as would be apparent from a plain reading of the statutory terms, that this section does not require "maintenance of status." Compare H. Rep. 97-980 Part 1, 97th Cong. 2d Sess. at 54 which we believe is incorrect ("This bill [H.R. 6514] further limits the privilege to aliens who have maintained their nonimmigrant status....").

inspection do not qualify. On balance, AILA would suggest that Section 131 of H.R. 1510 be deleted.

Conclusion

AILA is grateful for this opportunity to appear before the Subcommittee. The work of its members and staff with us and other interested citizens will hopefully result in a bill that promotes the national interest and does so in an efficient and fair manner. While we fear that many important items of reform have not been addressed in the bill at all, and its emphasis is on enforcement of illegal immigration rather than facilitating legal immigration, we look forward to the expected omnibus bill in this session so that the Subcommittee's entire program may be jointly evaluated and reasonable compromises may be achieved. .

Respectfully Submitted,



Robert E. Juceam  
President  
American Immigration  
Lawyers Association

Mr. MAZZOLI. Mr. Robert Ervin, member of the House of Delegates, American Bar Association, is welcome and recognized.

**TESTIMONY OF ROBERT ERVIN, MEMBER, HOUSE OF DELEGATES, AMERICAN BAR ASSOCIATION**

Mr. ERVIN. Thank you, Mr. Chairman.

I express appreciation to you and to the members of the committee for permitting us to appear here. I am going to cut our time to 5 minutes. I had a 30-minute statement prepared.

I think I realize the constraints of time the committee has.

Mr. MAZZOLI. I appreciate your helping us on that.

Mr. ERVIN. Thank you. I am particularly pleased to appear before two distinguished Floridians who are members of this subcommittee, Mr. McCollum and Mr. Smith, both of whom are familiar with the problems that we have of undocumented aliens in Florida.

Time permitting in my presentation or on questioning, I would like to perhaps comment on the Haitian situation. I have been privileged to represent the ABA in providing legal services for the Haitians on a pro bono basis in Florida.

The three things that I could address you best on probably are ABA processes of establishing policy and employer sanctions provision of this measure and the Haitian problem.

Even before I get into that or any of those, I would like to digress and say the statement has been prepared by me and submitted. That statement is the product of staff personnel and four sections of the American Bar Association—the administrative law section, international law section, individual rights and responsibilities, and the criminal justice section.

There are errors, at least two, possibly three or four, in the statement that I have submitted. I will resubmit it. The reason for the errors are that the staff prepared the directed comments to the Senate version, Senate 529, rather than this.

I am pleased that in each case, where there is an error that we think that the measure is improved and in the House here, there is a better measure than the Senate.

Now, the American Bar Association has, since 1954, concerned itself 19 times in the adoption of matters of immigration. In appearing here today for the American Bar Association, I hasten to add that we are not partisan. We are neither speaking for or against the measure. We know it is a monumental task, but we know it is almost a crisis matter in our Nation that has to be confronted.

But lawyers know what everybody knows, and we know that something has to be done.

The American Bar Association which is an association, a voluntary association, exceeding 300,000 lawyers, has a policymaking process. There are some 10 or 11 policy matters that we have measured against this measure and against the Senate measure, Senate 529.

So where there is a difference, it is not a criticism of this measure as such; it is not an opposition of this measure as such; it is simply the fact that from the perspective of lawyers who have long

been familiar with this and have debated it and deliberated on it and studied it, we feel there are some shortfalls. We are simply trying to help. That is our purpose to be here to help.

The criticisms, if you want to characterize it as such, of the measure are those things, largely those things, that lawyers are concerned with. We suggest that the measure provide the usual components of due process and equal protection—that is a hearing for the individual, at least the opportunity is there for a hearing before an independent judge, not a biased judge, not a judge that is subject to some sort of influences or control or apprehension of people; that there be a right of appeal; that there be the right of counsel; that there be the right to witnesses and to a fair hearing.

Now, as to the employer sanction provisions, this is something that the ABA, American Bar Association, has labored over and agonized over for years.

I was chairman of the criminal justice section of the American Bar Association when we first addressed it in 1976. At that point, we came out in favor of employer sanctions by one vote margin. I was president in the House of Delegates when it was adopted by a voice vote, a small, but perceptible margin.

Since then, since 1977, in the 5, 5½ or 6 years that have occurred since then, the position of the association has been reversed. It is reversed for humanitarian purposes. Let me say the reversal did not occur in a corner or under a bush or without notice. The matter was before us on three occasions before we finally addressed it.

I might say that the processes were presided over by the distinguished chairman of the House of Delegates who is equally concerned with due process and responses and is Stan Chauvin from Louisville.

The humanitarian aspect—do you call me down on my time?

Mr. MAZZOLI. Yes; I'm sorry, but why don't you try to finish up.

Mr. ERVIN. Certainly.

On the humanitarian aspect, there are between 3 million and 6 million undocumented aliens in this country, men, women, and children. They are not going to be sent away; they are going to be fair. Somebody has to feed them and clothe them. We are not favoring exploitation or unlawful labor practices or labor conditions.

We are simply saying that it is wrong in any way to impose employer sanctions to discourage the employment of these persons because if they are not employed, then they resort to other means. And I could go on forever on that, Mr. Chairman.

Mr. MAZZOLI. Thank you, Mr. Ervin. Thank you very much.

[The complete statement follows:]





# AMERICAN BAR ASSOCIATION

GOVERNMENTAL AFFAIRS GROUP • 1800 M STREET, N.W. • WASHINGTON, D.C. 20036 • (202) 331-2200

## STATEMENT OF

ROBERT M. ERVIN  
MEMBER OF THE HOUSE OF DELEGATES  
AMERICAN BAR ASSOCIATION

before the

SUBCOMMITTEE ON IMMIGRATION, REFUGEES  
AND INTERNATIONAL LAW

COMMITTEE ON THE JUDICIARY

UNITED STATES HOUSE OF REPRESENTATIVES

concerning the

Proposed "Immigration Reform and  
Control Act of 1983", H.R.1510

March 16, 1983

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Summary of Statement

## The American Bar Association:

1. Opposes the establishment of employer sanctions; favors creation of more fair procedures under which sanctions may be contested, if sanctions are enacted.
2. Favors increased appropriations and resources to federal agencies charged with administering the immigration laws.
3. Favors full panoply of procedural protections, including right to seek counsel, in exclusion, deportation and denial of asylum cases and opposes summary exclusion.
4. Favors creation of independent U.S. Immigration Board in Justice Department, and authorization of Board to review decisions of Administrative Law Judges.
5. Opposes limiting period within which a petition to review a deportation order may be filed to less than 60 days.
6. Opposes adjustment of status provisions.
7. Favors requiring Labor Department decisions concerning labor certification to be subject to the judicial review provisions of the Administrative Procedure Act.
8. Favors according a legal status to unlawful aliens in the United States.

Mr. Chairman and Members of the Subcommittee:

My name is Robert M. Ervin and I practice law in Tallahassee, Florida. I very much appreciate this opportunity to appear before you today, in my capacity as the representative of the American Bar Association, to express the Association's views on the important immigration reform legislation introduced by you, Mr. Chairman, H.R. 1510. I currently serve as a delegate from Florida to the ABA's policy-making House of Delegates. I recently completed a term on the Association's Board of Governors and previously served as chairman of the ABA Section of Criminal Justice. In all of these capacities I have participated in the Association's continuing consideration of various proposed immigration law revisions. More recently, I represented the ABA before the U.S. District Court for the Southern District of Florida, in response to that court's request that the Association assist in seeking to obtain the pro bono services of lawyers to represent released Haitian nationals.

The ABA has carefully studied your legislation and other proposals pending in the last Congress. As a result of that study the Association's policy-making House of Delegates, meeting in New Orleans last month, adopted a series of new policies on some of the more important aspects of legislation before you. During that meeting, the House of Delegates also voted to reverse the Association's 1976 resolution in support of employer sanctions, and directed the establishment of a committee to work with Congress in this important task of reforming our nation's immigration and naturalization laws.

It is useful to note that the ABA committee will be composed of representatives of the Sections of Administrative Law, Criminal Justice, Individual Rights and Responsibilities and International Law and Practice. The coordination which this committee will facilitate among the interested ABA groups will permit the Association to continue the review of the various needed immigration reforms and to recommend further changes as appropriate. Many of the recommendations recently adopted by our House of Delegates to which I will refer have had their genesis in Association resolutions adopted over the past thirty years. I note this continuity in order to suggest the deliberativeness of the Association's

consideration of needed immigration reform and our hesitancy to recommend changes in this nation's immigration laws solely on the basis of the serious and unique crises which recently have confronted this nation.

For the reference of this Subcommittee I attach as Appendix A to this statement a summary chronology of the Association's consideration of the need for employer sanctions; attached as Appendix B is a summary of ABA immigration policies adopted since 1954.

## TITLE I - Control of Illegal Immigration

### Part A - Employment

One of the major provisions of H.R. 1510 is contained in the bill's initial sections and would impose severe civil and criminal sanctions on people who employ aliens not legally in the United States.

The American Bar Association opposes such employer sanctions on the grounds that they would be an unworkable, ineffective, expensive and discriminatory procedure for controlling illegal immigration. Such sanctions are viewed as a mechanism for reducing the flow of unauthorized entrance by eliminating what some believe to be the primary incentive for illegal immigration: job availability. Furthermore, it is argued, when illegal immigrants can't be hired, fewer citizens and legal alien workers would be displaced.

It is undisputed that many aliens reside and work in the United States and that there is a great need to end whatever human misery is caused by employers who exploit foreign workers. Employer sanctions, however, would involve immense financial and social costs without any assurance of accomplishing their goal. Implementation of an effective program also would be impossible due to budgetary constraints and constitutional limitations on INS enforcement powers. If an employer sanctions program would not reduce the flow of illegal immigration, but would increase the likelihood of employment discrimination against minority citizens and legal residents, such a program would be counterproductive and should be rejected.

The concept of employer sanctions has been debated in Congress for a number of years, but, with one exception, has never found sufficient support to become law. The sole exception is the



Farm Labor Contractor Registration Act of 1963, 7 U.S.C. Section 2045 (f). Consequently, no federal law prohibits the hiring of undocumented workers. Although twelve states have enacted employer sanction laws, and although that state authority has been upheld, *DeCaras v. Bica*, 424 U.S. 351 (1976), none of these state laws is in effect today.

Various entities within the ABA have seriously studied the need for sanctions, and the question of whether to support or oppose the establishment of federal sanctions has been before our policy-making House of Delegates four times in the past eight years. In 1976 a recommendation to support sanctions, submitted by the Section of Criminal Justice, was approved by the House of Delegates 98-91 in lieu of an Administrative Law Section proposal to oppose sanctions.

In February and August of last year the Section of Individual Rights and Responsibilities proposed resolutions to reverse our support for sanctions and this past August the International Law Section proposed to reaffirm our support of sanctions. In order to allow still more time for study, analysis and consultations among the interested ABA entities, action on all of these proposals was deferred until last month, when the House of Delegates by voice vote and after careful study and thorough, informed debate, approved a resolution reversing our prior support for sanctions.

On the basis of the debate and the reports before our House, the ABA delegates simply were not persuaded that sanctions will work. The ABA also is concerned that any possible gains in illegal immigration control as a result of sanctions would be overcome by the significant burden on law-abiding employers, and that such sanctions inevitably would invite discrimination against racial or ethnic minority citizens or lawful aliens.

Finally, the imposition of employer sanctions suggests that the control of our national borders is a state or local, not national, responsibility. Shifting the federal government's burden to improve immigration law enforcement to individual employers simply avoids recognizing the need to bolster federal law enforcement. However difficult it now is to allocate increased federal funds to immigration enforcement, it is many times more difficult for the primarily affected states to appropriate any more money for this purpose.

As noted above the American Bar Association has struggled for a number of years with this difficult issue, and we have observed Congress involved in a comparable, often divisive, debate. Consequently, should Congress ultimately determine

to approve some form of employer sanctions, we would urge Congress to consider various alternatives which have been suggested. Although the ABA has taken no position on these proposals, we commend two alternatives to your consideration.

The ABA is studying, and urges this Subcommittee to give serious consideration to, the amendment offered during the markup of the bill in the last Congress by Rep. Pat Schroeder. The Schroeder amendment would target sanctions on employers who violate labor laws and encourage exploitation of illegal workers. Under the Schroeder approach, employer sanctions would apply in only two circumstances: 1) where an employer has violated minimum wage or other labor laws and that violation involves illegal alien workers and 2) where the Attorney General determines that a pattern or practice of hiring illegal workers exists. This approach would allow the Attorney General to prosecute employers who repeatedly encourage illegal migration to the U.S. The approach embodied in the Schroeder amendment is worthy of serious consideration, since it seems to have the positive aspect of concentrating immigration enforcement on large employers with a record of employing and taking advantage of illegal aliens. This approach might also encourage large employers to comply with fair labor standards laws in order to avoid being targeted for close scrutiny as suspected exploiters of illegal aliens.

While the ABA opposes employer sanctions in any form, the ABA coordinating committee on immigration also will be giving serious study to the amendment offered during the last Congress such as that proposed by Sen. John Tower. Recognizing that employer sanctions are unreasonably burdensome to the employer, costly to the American taxpayer, unlikely to significantly curb the flow of illegal immigrants and potentially discriminatory against any job applicant of foreign origin or appearance, Sen. Tower proposed as an alternative targeted enforcement of employer sanctions against willful violators, for which a higher standard of proof must be met than that currently provided in H.R. 1510. Under the Tower amendment, the employer would be afforded an affirmative defense against a charge of willfully hiring illegal aliens if he voluntarily chose to use a standard verification form provided by the Attorney General. Furthermore, under the Tower approach, no employer would be required to verify worker eligibility, as H.R. 1510 now provides. It would eliminate the burdensome paperwork requirements generated by H.R. 1510 as well as the imposition of fines for noncompliance with this procedure, or for the failure to maintain records.

We note that the U.S. Chamber of Commerce maintains that, rather than gutting enforcement, such an approach would have the benefit of focusing enforcement on those who would purposely

violate the law, it would minimize the record keeping and other enforcement burdens placed on employers by the present sanctions requirement, and it would place the primary enforcement burden exactly where it should be--with the federal government.

If Congress disregards our primary recommendations and does impose sanctions, then we would suggest the establishment of more fair procedures for imposing sanctions. Civil penalties are used in many regulatory areas. E.g., Atlas Roofing Co. v. Occupational Safety and Health Review Commission, 430 U.S. 442 (1977). They have been a significant enforcement tool under the immigration laws since 1903, levied primarily against transportation lines that fail to observe prescribed safeguards. See Oceanic Steam Navigation Co. v. Stranahan, 214 U.S. 320 (1909).

Under current immigration practice, administrative fines may be imposed through an informal procedure, 8 C.F.R. Pt. 280. The carrier that receives notice of a proposed fine, 8 C.F.R. Sec. 280.1, may file a written defense and may request a "personal interview," 8 C.F.R. Sec. 280.12. When requested, the personal interview is conducted by an immigration officer, who forwards his findings and recommendation to the district director, 8 C.F.R. Sec. 280.13(b). The district director's decision imposing a fine can be appealed to the Board of Immigration Appeals, id. 8 C.F.R. Sec. 3.1(b)(4).

The proposed "Immigration Reform and Control Act of 1983" has the following provision for the administrative assessment of fines against employers charged with employing unlawful aliens:

"Before assessing a civil penalty under this subsection against a person or entity, the Attorney General shall provide the person or entity with notice and the opportunity to request a hearing respecting the violation. Any hearing so requested shall be conducted before an immigration officer designated by the Attorney General, individually or by regulation, in accordance with Section 554 of Title 5, United States Code."

The bill thus adopts, for the new employer sanction provisions, the present practice by authorizing immigration officers rather than courts to conduct proceedings in which the levy of a fine is contested. However, the proceedings are described as hearings rather than as personal interviews and are directed to be conducted in accordance with 5 U.S.C. Sec. 554, the basic adjudication provision of the Administrative Procedure Act. This may well raise a question about the applicability of 5 U.S.C. Sec. 556, which specifies that hearings required under 5 U.S.C. Sec. 554 must be conducted by an administrative law judge.

Section 107(c)(3) of the Immigration and Nationality Act, which would be added by Section 122(a) of the bill, specifically directs that immigration judges shall conduct proceedings for exclusion and deportation, for rescission of adjustment of status, and for asylum. There is no reasonable justification for omitting a similar direction for hearings to assess administrative fines. Section 274A(d) of the proposed statute establishes civil penalties of up to \$2,000 for each unauthorized alien in the employ of a particular employer and provides that repeated violations after the imposition of such civil penalties can lead to criminal prosecutions. Before such severe sanctions are imposed, an employer should be afforded the opportunity of a determination by an administrative law judge who is completely divorced from the enforcement apparatus.

#### Part B -- Enforcement and Fees

The ABA strongly supports the proposed sense of the Congress commitment outlined in Section 111, and urges that those federal agencies charged with administering the immigration and refugee laws and the pertinent laws governing fair labor standards and practices be provided sufficient resources and organization to enforce and administer the laws effectively and fairly. The borders of this country are extensive and essentially porous. They are patrolled by the Immigration and Naturalization Service, which long has been treated as the unwanted stepchild of the federal government, and has been denied the resources necessary to enforce and administer the law. Controls over foreign students, tourists, and other non-immigrant visitors to the United States have been exceptionally lax.

The law enforcement resources of, and administration of benefits by, the Immigration and Naturalization Service have trailed seriously behind the Service's workload. Inadequate staffing and management, including the failure to automate, have been crippling. Both the Reagan Administration and the bipartisan Select Commission on Refugee Policy recommended strengthening existing law enforcement programs and administration. There is a continuing and now acute need for Congress to appropriate additional funds to strengthen the Border Patrol and other enforcement efforts, to provide for the operation of helicopters and other needed equipment, and to automate the immigrant and nonimmigrant document control system and control of other alien records. Moreover, if enforcement resources are concentrated in priority states, such as California, Texas, Florida, Illinois and New York, enforcement can be enhanced further.



The Association has no stated policy concerning the bill's criminal penalties for unlawful transportation of aliens into the United States, Section 112, or for the imposition of certain fees, Section 113. However, the sanctions proposed in Section 112 seem appropriately aimed at strengthening border enforcement, and thus are not inconsistent with our support for Section 111. In this regard I would also note that the American Bar Association supports the November 1978 amendments to Section 274 of the Immigration and Nationality Act of 1952 concerning forfeiture of vehicles, although we specifically oppose further amendment of those provisions.

### Part C -- Adjudication Procedures and Asylum

The ABA endorses the Subcommittee's efforts to incorporate protection for the bona fide asylum applicant in the adjudication procedures set forth in Section 121 of H.R. 1510. One of the aspects of previous bills which has troubled the ABA is the concept of summary exclusion. At its recent mid-winter meeting the ABA House of Delegates rejected two resolutions which would have specifically exempted aliens "properly subject to summary exclusion" from the right to counsel, and the right to an administrative appeal. A third proposal, which was adopted, opposed the elimination of a hearing before an immigration judge "for an entry applicant who may not appear to the examining immigration officer to have the required documentation for entry or any reasonable basis for entry." The concept of summary exclusion was thus specifically rejected three times by the House of Delegates.

The serious nature of asylum claims should require the full panoply of procedural protections. A summary exclusion process which would have its greatest impact on persons seeking asylum would violate one of our most fundamental traditions of providing a sanctuary for persons fleeing injustice and persecution.

Such a process would also almost surely result in violations of international law, especially Article 33 of the U.N. Convention on the Status of Refugees, which forbids the refoulement of persons with a well-founded fear of persecution on the basis of race, religion, membership in a particular social group or political opinion.

A third reason for our concern regarding summary exclusion is that relatively few persons seeking asylum at our border or a port of entry will be sophisticated enough to communicate their intention of applying for asylum to the immigration officer.

This likelihood is increased by the fact that fleeing persons often arrive fatigued, fearful of authority and with limited or no knowledge of English.

In this regard Section 121(b)(1)(B)(ii) is an important provision to insure that no one arriving at the border with a legitimate claim to asylum is turned away without having the opportunity to have that claim heard. However, two concerns should be noted. First, recent experience with the processing of asylum claims, especially those submitted by Haitian<sup>1/</sup> and Salvadoran<sup>2/</sup> applicants, regardless of the mandatory nature of the statutory language, suggests the need to strengthen the implementation of the proposed statute so that the judgment of a single immigration official is adequately monitored by a supervisor. Second, even when the inspecting officer makes a genuine attempt to determine whether the person wishes to apply for asylum, experience has shown that even the concept of asylum requires a certain degree of sophistication which is not always possessed by a legitimate asylum applicant. For these reasons, we suggest that this section require that the examining officer shall operate according to regulations which will be developed by the Attorney General. We believe that the Subcommittee has so provided in Section 121(b)(3), but we suggest that this language specifically provide for the regulations to include some mechanism of supervision of examining officers.

One final comment on summary exclusion regards the provision in Section 121(b)(3) that the Attorney General consult with the Judiciary Committee in developing the procedures for assuring that aliens are not excluded without an inquiry into their reasons for seeking admissions into the U.S. We hope that the Subcommittee report will reflect your intention to seek the opinions of a range of outside groups as part of this consultation process.

We also would urge that the examining officer inform the applicant of the availability to seek legal counsel. Again, the Subcommittee has recognized this right to seek counsel in Section 124(a)(3)(B)(ii), which provides that "at the time of filing of notice of intention to apply for asylum, the alien shall be advised of the privilege of being represented by counsel . . . ." By moving this requirement up to the initial inspection, the Subcommittee would eliminate our concern that the

<sup>1/</sup> Haitian Refugee Center v. Civiletti, 503 F. Supp. 442, (S.D. Fla. 1980), aff'd as modified, sub nom.; Haitian Refugee Center v. Smith, 676 F. 2d 1023 (5th Cir. 1982).

<sup>2/</sup> Orantes-Hernandez v. Smith, 541 F. Supp. 351 (C.D. Cal. 1982); Nunez v. Boldin, 537 F. Supp. 578 (S.D. Tex. 1982).

availability of counsel not be limited, and that persons subject to exclusion, deportation or asylum procedures should be informed of this right to seek counsel and to enjoy full representation.

The ABA urges that persons subject to the adjudication procedures and asylum inspection and exclusion (e.g., Title I, Part C, Sec. 121(b) et seq.) should be informed of their right to obtain counsel prior to being barred entry into the United States. This could be accomplished, for example, by an amendment to Section 121(b)(1)(B)(ii) to require the examining immigration officer to inform the alien of his right to representation as set forth in Section 292 of the Immigration and Nationality Act.

The ABA opposes legislative changes which would dilute such current statutory provisions as Sections 242(b) and 292 of the Immigration and Nationality Act, 8 U.S.C. Sec. 1362 and 8 C.F.R. Sec. 292.5(b), that afford aliens the opportunity to be represented by counsel of their choice at no expense to the government in deportation, exclusion and asylum cases.

The legislation should preserve current practice, whereby indigent aliens who have been placed under exclusion or deportation proceedings are given lists of available free legal services by the INS as a matter of course (See, 8 C.F.R. Sections 236.2, 242.1(c).)

Since the right to counsel exists in the exclusion context, it should be announced to arriving aliens who would be subject to summary exclusion in view of the interests at stake for arriving aliens. The announcement, moreover, should be in writing. Giving notice of the right is crucial to its preservation in an otherwise unreviewable exclusion process. See Orantes-Hernandez v. Smith, 451 F. Supp. 351 (C.D. Calif. 1982); Nunez v. Boldin, 537 F. Supp. 578 (S.D. Tex. 1982), in which the courts required the INS to give aliens advice of the right to apply for political asylum in order to effectuate the right to seek asylum. Many persons arriving at the U.S. border without documents, affidavits or other proof of a colorable claim to enter the U.S. may not speak English or be familiar with their rights and obligations under U.S. immigration law. Because of the complexity of the immigration laws and the unfamiliarity with them by many persons seeking to enter or remain in the U.S., the role of the attorney becomes all the more important.

Finally, even where H.R. 1510 provides the right to counsel, the attorney's ability to provide full representation must be assured. In the Haitian cases, for example, even though lawyers representing Haitians seeking asylum were permitted, multiple

scheduling by INS of hearings of different asylum applicants being represented by the same attorney at the same time precluded full representation. Appropriate safeguards to prevent a recurrence of this type of situation should be incorporated in the legislation.

Section 106(a) of the Immigration and Nationality Act, 8 U.S.C. Section 1105(a), provides that a petition for review of a deportation order "may be filed not later than six months from the date" of any final deportation order. No time limit is prescribed for the filing of a petition for a writ of habeas corpus to review either a deportation order, 8 U.S.C. Section 1105a(a)(9), or an exclusion order, 8 U.S.C. Section 1105a(c); or for review of other administrative decisions arising under the Immigration and Nationality Act, 8 U.S.C. Section 1329.

In support of its proposal to amend the present provisions of the Immigration and Nationality Act to impose a 30-day limitation on the filing of petitions for review and habeas corpus or other petitions, a proposal embodied in Section 123(a)(3) of H.R. 1510, the Immigration and Naturalization Service has suggested that deportable aliens are able to obtain "extra years" in the United States by filing frivolous petitions for review. This is contraindicated both by the language of the statute and by the practice of the reviewing courts. The ABA suggests the insufficiency of 30 days and recommends that no less than 60 days be provided.

Section 106(a)(7) of the Immigration and Nationality Act, 8 U.S.C. Section 1105(a)(7), provides explicitly

"that nothing in this section shall be construed to require the Attorney General to defer deportation of an alien after the issuance of a deportation order because of the right of judicial review of the order granted by this section....[or] to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody...at any time after the issuance of a deportation order."

The Immigration and Naturalization Service is thus able to execute an order of exclusion or deportation under its current regulations 72 hours after the entry of a final administrative order.

In addition, a petition for review filed in a court of appeals is subject to a summary motion to affirm upon the ground that the petition is frivolous. See 8 U.S.C. Section 1105a(a)(3)



and Rule 27, Rules of Federal Appellate Procedure, a rule that has been invoked by the Immigration and Naturalization Service when the agency thought it warranted. See Asai v. Castillo, 593 F.2d 1222 (D.C. Cir. 1979); Der-Roug Chour v. INS, 578 F.2d 564 (2d Cir. 1978).

The filing of an action in a United States district court to review other administrative decisions of the Immigration and Naturalization Service, including a denial of student reinstatement, does not operate to stay deportation, unless the district court grants a preliminary injunction. A preliminary injunction is granted only when the customary requirements are satisfied, including the showing of probable success on the merits.

Moreover, the Immigration and Naturalization Service has not shown that the present provisions of the Immigration and Nationality Act have raised a substantial impediment to its enforcement of deportation orders. During 1979, the latest year for which information is available, 249 petitions for review of deportation cases were filed in the courts of appeals; 57 petitions for writs of habeas corpus and 159 declaratory judgment actions were filed in the district courts. The total number of aliens ordered deported after hearings was 25,896; 966,137 were required to depart without hearings.

Thus, there is no reason for shortening the time allowed to file actions for judicial review other than general considerations of repose and administrative convenience. In other fields of administrative action, even those with much less severe impact upon individuals' lives, these considerations are usually thought adequately served by a 60-day limitation upon appeal. There is no justification for a more rigorous rule in immigration cases. It should be noted that a 30-day period would as a practical matter provide significantly less than that amount of time for the immigrant and the attorney involved. Decisions of the Immigration and Naturalization Service, if not of the Board of Immigration Appeals, are rarely served or mailed on the date the decision is rendered; it is frequently one to two weeks before the alien or the attorney of record receives notice. In many, if not most, of the administrative decisions made outside of deportation or exclusion proceedings, and often even in those proceedings, the alien is not represented by counsel, which means that an attorney must be retained and familiarized with the case before the decision to appeal can be made. In such circumstances, a time limit of 30 days may effectively 'arrest' judicial review.

The ABA commends the Subcommittee for a number of the remaining revisions in Part C. We support the creation of a United States Immigration Board within the Department of Justice as proposed in Section 122. The independence of the Board is essential to insuring the uniformity of initial determinations by the Administrative Law Judges (ALJ).

In this regard, the ALJ should be authorized to review the examining officer's denial of entry of an applicant who may not have the required documentation for entry, and also should be authorized to review issues not raised in the application of a person seeking asylum.

We would also urge that the judicial review provisions in Section 123 be amended so as to provide review comparable to that authorized by the Administrative Procedure Act, 5 U.S.C. Sec. 706, including: review of decisions regarding the reopening and reconsideration of exclusion or deportation proceedings; asylum determinations outside of such proceedings; the reopening of applications for asylum because of changed circumstances; denials of stays of execution of exclusion or deportation orders and administrative decisions to exclude aliens from entering the United States.

#### Part D -- Adjustment of Status

Under current provisions of the Immigration and Nationality Act, 8 U.S.C. Sec. 1255, an alien who has been admitted to the United States by the Immigration and Naturalization Service may in most circumstances adjust his status to that of a permanent resident, if he is eligible under the relevant provisions of the Immigration and Nationality Act, without going abroad to appear before a United States consular official. He may effect the change by submitting an application to an INS officer in the United States if he has not engaged in unauthorized employment. The ability to change status within the United States is not limited to aliens who have "maintained continuously a legal status since entry into the United States." Thus, aliens who have been admitted to the United States as visitors for business or for pleasure, as students, or as international governmental employees and who have become eligible to obtain immigrant visas, have been able to change their status in the United States although they may have overstayed their permission to remain in this country.

The "Immigration Reform and Control Act of 1983" proposes to deny the privilege of adjustment of status to any person who has "failed to maintain continuously a legal status since entering

the United States." The effect of this change in law is to require that persons who have approved visa petitions and who are eligible to obtain immigrant visas must first return to their countries of origin in order to obtain visas with which to be readmitted to the United States as lawful permanent residents. In addition, all students, regardless of whether they have maintained their lawful status, would be ineligible to apply for permanent residence within the United States and would be required to return to their countries of origin in order to obtain immigrant visas with which to re-enter this country as permanent residents.

The ABA believes that these changes in law serve no useful purpose. They would substantially add to the burden imposed upon consular offices abroad, requiring them to adjudicate applications for immigrant visas, a function that can be more efficiently handled by the Immigration and Naturalization Service within the United States.

In addition, the proposed changes in the law would subject persons who are close relatives of American citizens or permanent residents, including a spouse, children, parents, and siblings, and persons whose employment has been determined to be urgently needed in the United States because of their skills, to undergo an unnecessary burden and expense in returning to their country of origin for the sole purpose of obtaining an immigration visa with which to be readmitted to the United States. Apart from this burden, the transfer of authority from the Immigration and Naturalization Service, whose decisions are subject to judicial review, to American consular officials, whose decisions are not subject to judicial review, would deprive aliens who are denied visas of a judicial remedy that they now have.

The argument in support of the changes in the law is that it is required in order to deter "visa abusers," that is, persons who obtain visas to enter the United States as nonimmigrant visitors with the intention of remaining in the United States permanently. A change in the law is not required to effect a solution to this problem. The policy of the Immigration and Naturalization Service has long been, and immigration judges and the Board of Immigration Appeals have long held in the exercise of their discretion, that these abusers are not eligible to change their status within the United States. Ameeriar v. INS, 438 F. 3d 1028 (3d Cir. 1971).

## Title II -- Reform of Legal Immigration

Section 201 of the legislation prescribes the conditions under which the Secretary of Labor may issue labor certifications required of certain classes of applicants for permanent residence and modifies the present scope of judicial review under the Administrative Procedure Act to permit administrative decisions to be set aside only upon "compelling evidence" that the decision has been made "in an arbitrary and capricious manner." The proposed amendment is silent as to who is entitled to seek review.

The ABA believes that there is no reason to exempt the decisions of the Labor Department from the judicial review provisions of the APA. It proposes revisions in the legislation regarding review of decisions involving the issuance of labor certifications to provide expressly that "any person aggrieved" by the agency's action may have judicial review of the Secretary of Labor's decision as prescribed by the Administrative Procedures Act.

To promote international trade, many developed countries of the world waive visas for tourists and certain business travelers visiting for a short period of time. It is believed that the United States should adopt such a system. Beyond benefiting international trade and tourism, the adoption of such a system would relieve State Department and INS employees of unnecessary work, and to that extent enable more attention to be devoted to other aspects of the administration of immigration laws that are now being neglected.

With respect to the quota system for immigrant visas, the 1965 amendments to the immigration laws weighed family reunification more heavily than economic and cultural benefits to be derived by the United States. Indeed, of the approximately 800,000 people immigrating to the United States legally last year, only 40,000 were aliens entering for employment in positions requiring skills in short supply. The Select Commission advocated reform of the immigration system to give greater emphasis to the flow of economic and cultural benefits to the United States and less consideration of family reunification in the allocation of quota numbers of aliens entering permanently as immigrants. The ABA supports this reform.

In addition, the proposed legislation singles out students as persons who cannot change their status within the United States, regardless of whether they have maintained lawful status. The limitation upon the ability of students to change



their status in the United States is accompanied by a proposed change in the law requiring them to return to their countries of origin for a period of two years before they can qualify to become permanent residents. However, this requirement can be waived if there is a showing of exceptional or unusual hardship upon a citizen or a permanent resident of the United States or if the services of the student are required in this country for reasons of the public interest. The ABA takes no position on the proposal that students be required to return to their countries of origin for two years, but it believes that those students who have been granted a waiver of this requirement would be able to adjust their status within the United States without the need to go abroad and appear before a consular officer.

### Title III -- Legalization

The American Bar Association urges "that those unlawful aliens who are now here be dealt with realistically and humanely and that those who are otherwise law-abiding be accorded a legal status." This policy reflects the consensus of the three sections of the ABA significantly involved in immigration issues -- the Sections of International Law and Practice, Administrative Law, and Individual Rights and Responsibilities -- and the ABA's House of Delegates that legalization is in the national interest.<sup>3/</sup>

Consequently, the ABA supports the concept of legalization embodied in Title III of H.R. 1510, and supports your conclusion that legalization is the only humane and practical response to the presence of an estimated 3-6 million illegal aliens now in the country. Deportation of these persons is impractical and would rend our social fabric. Likewise, the continued presence of a large underground society is not in the national interest.

<sup>3/</sup> The ABA recommended adoption of a limited legalization proposal in 1976: "Be It Resolved, That the American Bar Association supports the provisions in Section 4 of H.R. 8713 (94th Congress, 1st Session), granting amnesty from expulsion to certain illegal aliens, but urges that the bill's language should be clarified in order to avoid inequities and favors elimination of its one-year limitation for making applications for this relief." (House of Delegates approved, August, 1976). H.R. 8713 would have legalized the status of aliens who entered the country before June 30, 1968, were close relatives of U.S. citizens or lawful permanent resident aliens, and would suffer unusual hardship if deported.

Illegal aliens, because they are outside the protection of the law, are susceptible to exploitation. Often they are afraid to seek needed health services, education, or to cooperate with local police authorities for fear of apprehension by the Immigration and Naturalization Service. Their continued unlawful status renders these persons the most vulnerable members of our society, and undermines our historical commitment to a free and pluralistic republic.

Many unlawful aliens have for years made substantial contributions to the U.S. economy and culture. The substantial equities many have established has led the ABA to conclude that it is fair and reasonable to now accord them an opportunity to begin the process of becoming citizens.

In light of these considerations, ABA policy is carefully drafted to recognize the importance of the legalization program covering the maximum number of otherwise eligible illegal persons now here, and that all those eligible should be accorded a single, and the same legal status. The ABA believes that the country should "wipe the slate clean," and that the cut-off date for eligibility should be as current as possible. Although the ABA has not taken a specific position on a cut-off date for eligibility, the use of the phrase "now here" in our resolution was deliberate.

The ABA also believes that granting a single status to all eligible for legalization is both equitable and practical. Implementation of legalization will be an extraordinarily difficult undertaking, and thus, confusion and administrative problems will be minimized if one status is accorded. We also think it would be unnecessarily costly to grant temporary resident status to a large proportion of those legalized, therefore creating the necessity of reprocessing them for permanent resident status in the future. We are concerned that the government not legitimize the "second class" image which illegal aliens now bear through the statutory enactment of a temporary residence program.

The principle of legalization recognizes the virtual administrative impossibility and social undesirability of processing for deportation the current unlawful alien population. Legalization acknowledges our relative failure to control our borders in the past, and it also permits us to return our attention to enforcing those borders in the future.

Appendix AHistory of ABA Consideration ofEmployer Sanctions Proposals1976 - 1983

Aug. 1976: House of Delegates, by a standing vote of 98-91, substituted a resolution favoring employer sanctions (proposed by the Section of Criminal Justice) for a resolution opposing sanctions (proposed by the Section of Administrative Law) as part of a package of immigration reform recommendations. As amended, the package was approved by voice vote.

Feb. 1982: Section of Individual Rights and Responsibilities submitted for House of Delegates consideration a resolution to overturn ABA endorsement of sanctions. At the suggestion of the Board of Governors and upon the request of the Section of International Law and Practice, consideration of the resolution was deferred until August 1982.

Aug. 1982: Following a series of meetings with all four interested Sections, the Section of Individual Rights and Responsibilities resubmitted its resolution opposing sanctions and the Section of International Law and Practice filed a resolution favoring sanctions. A number of other immigration resolutions also were submitted on which the Sections disagreed. Upon mutual agreement all resolutions were withdrawn pending further discussions.

Feb. 1983: Another series of discussions on numerous immigration reform issues was concluded by the Sections of Administrative Law, Criminal Justice, Individual Rights and Responsibilities and International Law and Practice, and a series of resolutions was submitted to the House of Delegates by all Sections except Criminal Justice. After the issue of employer sanctions was debated, the House of Delegates, by voice vote, approved the resolution reversing ABA support for sanctions.

## APPENDIX B

AMERICAN BAR ASSOCIATION IMMIGRATION POLICIES: 1954-1983

<u>Introduced</u>	<u>Section</u>	<u>Description</u>
*Mar. 1954	Ad Law	Judicial Review of deportation orders
Oct. 1955	Ad Law	Establishment of a Board of Visa Appeals
*Feb. 1958	Ad Law	Deportation and Exclusion orders
Feb. 1958	Ad Law	Bd. of Immigration Appeals statutory basis
*May 1958	Ad Law	Immigration and nationality laws
Feb. 1960	Ad Law	10-Year Statute of limitation (deportation)
*Feb. 1960	Ad Law	Advance notice of deportation
Feb. 1968	Ad Law	Special Inquiry Officer granted benefits & protection of APA
Feb. 1968	Ad Law	Statute of limitations for revocation & cancellation of certificates
*Aug. 1973	Ad Law	Preparers of application under naturalization laws
Aug. 1973	Ad Law	Proper Immigration procedure
Aug. 1974	Ad Law	Authorize judicial review of final orders of exclusion
Aug. 1975	Ad Law	Attorney General given more discretion to waive grounds for deportation & exclusion
Aug. 1975	Ad Law	Amend provisions for deporting convicted aliens
Aug. 1976	Ad Law	INS proceedings to eliminate backlogs & improve fairness
Aug. 1976	Ad Law & Criminal Justice	Criminal & economic sanctions against employers of illegal aliens [Repealed by virtue of passage of contrary resolution, 2/83]
Aug. 1976	Ad Law	Amend labor certification programs
Aug. 1977	Young Lawyers	Adjust immigration status of Indochinese refugees
Feb. 1980	Criminal Justice	Vehicle Forfeiture
Aug. 1980	Ad Law	Board of Immigration Appeals sole appellate authority

\*Deleted from current policies of the Association by reason of age. Unless deleted policy was supplanted or superceded by a conflicting policy, the deleted policy still represents the position taken by the ABA.



<u>Introduced</u>	<u>Section</u>	<u>Description</u>
Feb. 1983	Indiv. Rts.	Rejection of employer sanctions because they would be unworkable, ineffective, expensive and discriminatory .
Feb. 1983	Ad. Law, Int'l Law & Indiv.Rts	Endorsement of "legalization", legal status and realistic and humane treatment for unlawful aliens who are now here and are otherwise law-abiding.
Feb. 1983	Ad. Law, Int'l Law & Indiv.Rts	Opposition to legislation that would: 1) Require filing of actions for judicial review of admin. decisions, including deportation orders, within less than 60 days of such decisions; 2) Forbid adjustment of status to that of permanent resident if alie: admitted to U.S. as student or failed to continuously maintain legal status; and 3) Authorize administrative enforcement of civil penalties without opportunity for formal APA hearing.
Feb. 1983	Ad. Law, Int'l Law & Indiv Rts	Support for legislation that would: 1) Require admin. law judges be appt'd pursuant to APA for immig. proceedings; 2) Permit appeal of decisions by Sec'y of Labor re labor certif. petitions to the courts, w/ scope of judicial review to comply with APA; 3) Preserve right to pursue available admin, equitable or legal remedies when an employer fails to comply w/ terms or conditions of employment of non-immigrants.
Feb. 1983	Ad.Law, Int'l Law & Indiv Rts	Reform of U.S. immigration laws in accord with principles that: 1) Sufficient resources and organization to fairly and effectively enforce immigration and fair labor standards laws be provided to fed. agencies.; and 2)existing laws for admission of aliens be reformed to assure increased flow of economic and cultural benefits to U.:
Feb. 1983	Ad. Law, Int'l Law & Indiv Rts	Appointment by the ABA President of a coordinating committee to implement ABA immigration recommendations.
Feb. 1983	Indiv. Rts. and Ad. Law	Opposition to legislation failing to provide the right to appeal to an independent body for all persons subject to admin. exclusion or deportation orders or denial of asylum claims
Feb. 1983	Ad. Law & Indiv. Rts.	Opposition to legislation that would: 1) Eliminate a hearing for entry applicants who may not appear to have required entry documentation or reasonable basis for entry or limit asylum hearings to issues raised in asylum application; and 2) Limit scope of judicial review of admin. decisions to less than provided in APA for specified proceedings
Feb. 1983	Ad. Law & Indiv. Rts.	Opposition to legislation that would limit the rights of persons subject to exclusion, deportation, or asylum proceedings to retain counsel and enjoy full representation

Mr. MAZZOLI. Again, I thank all of our panel for their willingness to try to condense information to volumes of just to 5 minutes, but it does get us to the point where we can ask some questions.

Let me start off and yield myself five minutes to get it started.

Let me say at the outset, I am not going to whip this thing too far, but I am very disappointed in the ABA. I will have to say that publicly. I think the statement is sloppy. I think it shows poor draftsmanship. I think it shows less than good attention to detail.

If this is any indication of the kind of care and preparation that went on in New Orleans with respect to the question of employer sanctions, how do we know a fair vote was even taken? If I had been sitting in the Florida group, chaired or not by Stan Chauvin, if I had been sitting in the audience, and somebody presented a case as faultily as this was presented, I might have voted against employer sanction myself.

I say that to you softly. It is just the fact that we have got to be sure that we understand the rules. The ground rules are just not being abided by.

Mr. ERVIN. I will answer that if it is a question.

Mr. MAZZOLI. Certainly, this doesn't say we are not going to pay attention.

I read your statement last night. But I have to say, though a member of the American Bar Association myself, this is not really a statement which I think reflects the kind of care that should have been reflected in it.

Now, perhaps you can help me. You have references in here to provisions in the Senate bill. Furthermore, I understand the references to the Senate bill aren't even correct.

You were saying there are two or three oversights and corrections which you are going to make, and I hope you do and that the corrected statement will be made a part of the record. But you better have your staff, who apparently put this thing together, be sure because my staff tells me they are wrong with respect to the Senate bill.

So let me yield you a little time at least to tell me how bad I am if I have taken a cheap shot at you.

Mr. ERVIN. Certainly, you are not bad, Mr. Chairman. Certainly, you are not taking a cheap shot. You and I are both concerned with a very difficult question that faces our Nation today, one that has to be responded to. I don't envy your task.

Now, on the correctness of whose staff is correct, there are errors with improper references. I am not going to say your staff is correct or my staff.

Mr. MAZZOLI. We have lived with it for 2½ years. I would put these people against any of those I could find.

Mr. ERVIN. A supplemental.

Mr. MAZZOLI. I don't want to get too far down that trail.

Mr. ERVIN. I am saying that the procedures of the House of Delegates, when you spoke of their concern there, it was a very, very deliberate procedure. We have 380 members. They are all representatives of every walk of the legal profession, including among those the Attorney General of the United States.

Mr. MAZZOLI. The gentleman from California, my ranking member, Dan Lungren, has said he wasn't invited to say a few

words. The chairman of our full committee, Mr. Rodino, wasn't asked to say anything. The gentleman from Kentucky wasn't solicited on advice on the good or bad.

Maybe some immigration lawyers who are against this bill because it would upset their apple cart were the ones who led the charge; I don't know. But what I am saying to you is that it seems like we who have lived with this ought at least to have had an opportunity to inform our colleagues of some of the things that are going on.

Mr. ERVIN. Mr. Chairman, you did have the opportunity. Let me say that we operate somewhat similarly to the House of Delegates of the Congress of the United States. We do have representation.

This matter was a public matter for more than 1 year. Public hearings were held by the various sections, and then the matter came before the House on the third occasion and was thoroughly debated. Every point of view that you can imagine was represented there.

So it was not a matter of shutting you out. It was open ballot of lawyers of the United States, including yourself.

Mr. MAZZOLI. Let me turn for what little bit of time I have left to Mr. Shattuck.

I appreciate your statement which, as usual, is well done and is amply supplemented with your more detailed summaries. I can't find it on this table, but somewhere, you mentioned your new approach which is to target enforcement on pattern or practice violators.

This subcommittee was faced with that recommendation in the last Congress. We rejected it because we thought that would encourage discrimination. It would permit employers to commit improper acts which fall short of a pattern or practice. Pattern of practice is not always easy to show, as you and I know.

So let me ask you to help me. Do you think there would be in your formulation unintended or unwitting continuation of discrimination?

Mr. SHATTUCK. Let me say two things, Mr. Chairman.

First, what I have given you, I want to stress, is the early thoughts of a group of employment experts who are addressing this matter. We do not have an amendment yet. In fact, we have an approach which we hope is constructive, based on what we regard as a very, very important problem which frankly has not—not by you so much as those perhaps who have gone before—been sufficiently addressed in terms of what the employment sanctions really mean.

By that, I mean no one has looked seriously as far as we know—and I would be happy to be corrected—at how title 7 of the Civil Rights Act, which is the one statute on the books that is available to someone who is facing discrimination, how that is going to come into play vis-a-vis these employment sanctions.

Starting with the premise that there are at least three major drawbacks in title 7, and I have outlined them in my statement—

Mr. MAZZOLI. I have read those. It is on page 5.

Mr. SHATTUCK [continuing]. We reached the preliminary conclusion it is essential to draw back from the very strict and sweeping sanctions approach which is in the bill and has been for the last



couple of years and to see how, if you will, that sanctions of the program can be targeted.

That is perhaps a loaded word, and there are so many loaded words in this area, I don't particularly want to couple myself with loaded words and say that is what we are necessarily endorsing so that those employers who do hire one, two or three on an occasional basis, illegal aliens, are not going to be caught by the sanction system.

So that the psychological factors which are militating in favor of discrimination on behalf of many of those employers who are facing the very difficult question when they hire someone of, well, we got this new employer sanction system here, we have title 7 over here, what shall we do, well, what we should do probably because that employer sanction system is so strict is go ahead and discriminate against those who look for it.

That is a very serious issue, and I know you are concerned about it, Mr. Chairman. It is that premise from which we are starting.

We are trying to disengage and put the pattern of practice approach on the table so that it can be discussed in that kind of a reference.

Mr. MAZZOLI. We certainly will be very interested, Mr. Ervin, on this attempt made to give an opportunity for us to explain our position.

I was frankly flabbergasted when the ABA came out against employer sanctions, particularly since I was one of the attorneys who came to this Congress not believing in employer sanction, but having looked at it for 4 years, believe it is absolutely necessary.

It frankly reminds me a little bit of electing people to student body presidencies in high schools or colleges, to elect them for reasons other than for what they then go out and make their decisions on.

I, frankly, don't think that reflects the attitude of all attorneys because I don't think most attorneys even thought about this very much.

Just, you know, saying it is made available and so forth, that is interesting. But I don't think it was to the extent that any Member of this Congress, as far as I know, is asked to make a presentation prior to the time we vote on it, although, as I understand, there were other people very much against it.

Mr. ERVIN. May I comment?

Mr. LUNGREN. Certainly.

Mr. ERVIN. Let me say again that there was no shut-out on it. My time has expired.

The gentleman from California has asked for 5 minutes.

Mr. LUNGREN. Thank you, Mr. Chairman.

I have to get on in a running dispute here with the ABA. But I would just signify, being a dues-paying member of the ABA, I always thought when you considered matters as important as this, you at least make an attempt to try to talk to those lawyers, members of the organization, who have been dealing with the legislation for the past 4 years.

To say that you have had open hearings all over the country is very interesting, but we may be engaged with our own hearings



here and not be able to break away because we are listening to witnesses.

Maybe you think that we are asking for too much. But frankly, I think that you have members of your own organization including attorneys in the Judiciary Committee making policy with the 300,000 lawyers in the United States, and some come from various sources, including those elected in elections in their States.

They, like Congressmen, in a sense, hear what their constituents say. They hear what Americans say. They perceive their task.

One of their tasks is to help this committee, to develop recommendations to this committee and to other committees of Congress.

Mr. ERVIN. Insofar as participation, though first the Attorney General of the United States, a Member of the House. He did not personally address the House, but David Hale, a special assistant, as I recall, was thoroughly conversant with what went on.

He not only, I believe—

Mr. LUNGREN. Are you referring to Mr. Hiller?

Mr. ERVIN. Yes.

Mr. LUNGREN. I talked to him about it. He was to make a statement before the final vote was given. It would indicate less than what you are saying.

Mr. ERVIN. It would say for the Criminal Bar Association.

What I am saying is this was an open matter. It had been before the lawyers of our Nation for more than 1 year on employer sanctions three times. It came to the House of Delegates in February 1982 and was deferred. Every Member of the House had a copy of it. There was wide distribution to State and local bar associations.

It was deferred. It returned to the House of Delegates again as a policy matter in August 1982 and was again deferred.

It then came on the third occasion, same matter, in February 1983, wide discussion, wide dissemination, newspaper report, lawyers throughout the Nation, Bar Journals, all of those carried this issue. It was available. It was available. Certainly, the information was there.

Mr. Lungren, I would personally have moved the privileges of the floor for you to address the House had you indicated that you wanted to.

Mr. LUNGREN. I understand that. All I am saying is that this passed the Senate last year by an overwhelming margin. The Judiciary Committee in the Senate is made up almost entirely of attorneys.

I don't run the ABA, obviously. But it seems to me you would at least solicit specific comments from your brethren who happen to be serving in positions of authority to try and make these difficult decisions.

You have told us these are tough decisions. We all agree with that. But I just pay my dues, and I just think that that is my obligation because I have got some problems here.

But, I frankly think it was a cavalier attitude towards those of us who had been working on this issue from this standpoint who happen to be attorneys. You obviously don't. But I am just saying for us to be surprised by what the ABA is going to do in an organization all of us belong to upsets me a little bit.

Now, Ms. Gonzalez, I am sorry I wasn't here for your testimony. I tried to go through it, and I see, of course, that the immigration section of the county bar has come out against employer sanctions or at least you use the term "grave reservations," or "against the concept as a concept."

Ms. GONZALEZ. No; we are not against employer sanctions as a concept. What we have tried to do is focus on improving the employer sanction penalties that have been suggested by the Members of the House committee.

Mr. LUNGREN. I think you mentioned something about educating the employers before we bring down the sanctions and so forth.

Ms. GONZALEZ. That is true. The House version only has a 6-month education period and then immediately starts levying fines. The Senate version has—

Mr. LUNGREN. We have a 6-month period in which there is a total education. Then we have a "first bite" concept. The employer gets one bite of the apple, no matter whether it is 6 months later or 10 years later.

The first problem they have is just treated as a warning, and it is after that point that they become subject first to civil and then criminal penalties.

Ms. GONZALEZ. I think a much longer education period is needed. I have worked a lot with different manufacturing companies, and I can attest to the fact that they are quite confused about their immigration responsibilities, the employers to whom I have spoken about this bill are very much relieved that there is an education period, and I feel they would like to see a much longer period.

Mr. LUNGREN. Let me ask you, how long do you think we would need to educate the employers to do two things: First, ask for documents?

We have articulated what the documents are. Then sign a piece of paper. Presumably, the INS at that point in time will have a document that is available—a common document—saying that I have checked, and then have the prospective employee sign a piece of paper over penalty of perjury saying "I have a right to be in this country," and put those in the file.

Ms. GONZALEZ. Well, I think employers will want to do more than that. To date, they are doing more than that. They want to verify the validity of the documents that they are recording, because they don't want to afterwards find out during an immigration raid they have lost their entire work force.

They want to make sure the people they are hiring today will be with them tomorrow. So until you give them a secure system of verification, they will be continually tempted to try and verify the validity of those documents.

If you wait for 3 years before you give them that, they will discriminate. I think that is the critical fault of this legislation.

Mr. LUNGREN. I wish we could have a secure document, and I would vote for it. Unfortunately, I don't think we have got the majority of votes for that.

Let me just mention this. Your testimony is basically contrary to the testimony we have received from a number of employers who have told us they do not want to be placed in the position at all of verifying the documents other than just looking at them and seeing

that on their face they are valid because then they tell us we are putting them in the position of being policemen and policewomen, and they don't want to do that.

Ms. GONZALEZ. I think it depends which employer you are speaking to. There are a variety of employers out there. You have employers who are paying attractive wages who are attracting a wide range of American applicants. They have a range of applicants to choose from, and they want to make sure they are making the right choice.

And it is going to be this type of employer who is going to want a little something more. He wants to make sure he is hiring someone who will be with him tomorrow.

The type of employer who only seems to attract undocumented aliens, given his wage structure and working conditions, really will just want to record the document. There will be a lesser amount of discrimination from that kind of employer; it just depends on who you are speaking to.

The employers I talk to are very cautious, and they are cautious today when there is no imposition of fines. There is a telephone verification system currently operating in Los Angeles, and people call me when they can't get through to the Immigration Service.

The immigration agents have provided this number to employers to try and verify the validity of alien registration cards at the time of hire. Unfortunately, the computer is generally down, so employers become very frustrated. They do want to verify the validity of their cards.

They call Immigration and hear: "Sorry, you will have to call us tomorrow or the day after, the computer is not functioning."

Mr. LUNGREN. We understand that problem. That is one of the reasons why in the interim what we are suggesting is just two or three regularly identifiable documents—social security card, birth certificates, et cetera—until we get to such a time we can get agreement.

I would like to have a verifiable social security card that has to be presented only at the time of employment to get rid of that problem.

Ms. GONZALEZ. I would like to see no imposition of penalties until you get a secure system, and I would like to see more work done on engaging voluntary employer cooperation.

Mr. LUNGREN. I wish we could do all those things, but I am very, very worried that if we don't have employer sanctions as a part of the total bill in conjunction with the other things we are going to do, much of it will fall because, as we have said, the magnet of drawing people here is jobs. Unless you attack that, you are not going to do much about it.

Second, from an enforcement standpoint, it is a much better enforcement tool to go out, and if you find 100 people who are undocumented workers working for an employer, it really doesn't do a whole lot to put them all on a bus, bring them down to the border and let them cross the border that night. They will be back in the next 2 days.

But if you have an employer that is going to be fined \$1,000 per individual who is working illegally for him on the basis of facts



that are proven in a courtroom, that is going to mean far more to him and he is going to be more selective in his judgment.

Ms. GONZALEZ. However, I think chances are those 100 people presented a green card to the employer at the time of hire. Many employers in Los Angeles have green cards on file for the majority of their work force, so you won't be able to impose those sanctions. They won't be effective unless there is a way to verify alien work authorization.

Mr. MAZZOLI. The gentleman's time has expired.

Since the bells have rung, I don't know whether my colleagues would be disposed to breaking now and voting and coming back.

Mr. SMITH. If I could have 5 minutes. I won't be able to come back.

Mr. MAZZOLI. The gentleman from Florida will not be able to return, so he would like to use his 5 minutes.

Mr. SMITH. Thank you, Mr. Chairman.

I am not going to get into the other debate, since I am not a practicing lawyer anymore. I am going to put myself aloof from that problem—19 years was enough.

I am just going to throw out two things. I asked this question of a previous panel and got a response that I think was rather incorrect. There are two theories with reference to whether or not due process of law under the 5th and the 14th is available.

I like to call it the penetration theory. If you get in and you are caught, you are entitled to due process. If you are caught upon entry, you are not entitled to due process. If you penetrate far enough, there is somewhat of a symbolic patting on the head that you are here, and we have to deal with you. If you are caught upon entry, you are not here.

Based on that dichotomy, which I think is ridiculous and absolutely absurd, you get a quarter of a mile and you are caught and you may, in essence, be in some degree entitled to due process, and if you are caught on the beach you are not.

I would like just a very short response. Are all the people in both those categories, notwithstanding what the Supreme Court may choose to have as a dichotomy, entitled to due process of law under the 5th and the 14th, as you see it?

Mr. ROBERTS. I think the Supreme Court case you are referring is one back in 1953, a 5 to 4 decision, which stated that insofar as concerns an alien who was seeking to enter the United States for the first time; that is, an entrant alien, due process is that which Congress says he shall be entitled to.

Mr. SMITH. No; you are not answering my question. I would really like a quick response. There are a lot of us, and there is a very short time.

Do you believe that everyone who comes to this country, whether they are discovered 2 hours afterward 50 miles inland or are stopped on the shore, are entitled to due process of law under the fourteenth and fifth amendments to the Constitution of the United States, which would mean they could appeal themselves all the way up to the Supreme Court of the United States and be here during the whole course and, in fact, have an attorney provided for them by the Government if they could not afford one?

That is the question I wanted to find out.



Mr. ROBERTS. I think each man who comes forward is entitled to that process which is due to him. That is what due process means. It doesn't mean delaying necessarily. It means that he shall have a fair adjudication.

I don't think that somebody who comes here without documents, without any claim of entry, who simply presents himself and says "I would like to get in," I don't think due process requires that he be admitted or that he get a full-blown hearing such as is given to an alien who lives in the United States for 20 years as a permanent resident.

Mr. SMITH. That answers my question. Thank you.

Anyone else care to comment?

Mr. JUCEAM. Yes, sir, because the way you put the question suggests the kind of process that is due is the same for all kinds of claims, and I think I share Mr. Roberts' comments that any person physically in the United States, regardless of their immigration status, is entitled to due process under the fourth and fifteenth amendments.

However, the nature of the process that is due can be entirely different. So, to answer your question "yes" does not imply—and I don't think Mr. Roberts meant to imply—that just because we have a different kind of process, it is conceivable that a single person standing at the border as an immigration officer can exclude someone without having an opportunity to have that judgment tested.

Now, that doesn't mean have it tested by an immigration judge on an evidentiary record 6 months later, but it does mean—at least I believe it means—that if you are physically here the judgment being made at the border by whoever is making it can't be arbitrary. It can't be that I see Mr. Smith and he has got red hair and I don't like red-haired people, and no matter what he says to me I am kicking him out.

Mr. SMITH. Well, wouldn't due process require the judgment in fact be open for subject review by a higher tribunal?

Mr. JUCEAM. I don't believe that is so unless the alien is making a claim to asylum or making a claim to being a citizen or lawfully admitted permanent resident or that he has got a status which otherwise under law entitles him.

I think if all he says is, "Mr. Roberts, I am here. I want to stay. I don't want to go back," that does not require an immigration judge's hearing.

Mr. SMITH. Have you encountered any of these undocumented workers or illegal aliens, or any other title you want to use under the umbrella, who have told you "I am here, and I want to stay, and I have not had asylum for one reason or another"?

Mr. JUCEAM. Yes, sir, not only that, I ought to tell you I don't practice immigration law, although I am representing the American Immigration Lawyers Association.

A short answer, I have met many people who say "I came in with a false reason;" that is, "I came in for a different purpose and now how do I stay?"

Mr. SMITH. Mr. Shattuck.

Mr. SHATTUCK. Congressman, I totally agree with your analysis of the absurdity of saying someone who has penetrated in the coun-

try has due process and that there is no process that is available to someone who is at the border.

I am not sure I come out the same way that your question suggests. Where I come out is there——

Mr. SMITH. I never suggested anything. It is just the way I framed my question.

Mr. SHATTUCK. I think there is a critical element of due process at the border which right now this bill overlooks and which we have recommended it include. People who present themselves at the border, particularly at the southern border and particularly those who may be coming up from Central America these days, have in many instances claims for political asylum that they won't even understand how to make, and when they face an immigration officer—and that is the only person whom they face—and they are then excluded based on a determination of that immigration officer, for whatever reason, that they don't have a claim to asylum, they have been denied due process in a way that substantially discriminates between them and the person who is 50-60 miles within the border, or whoever else happens to have been in the country for a period of time.

We recommend, and current law provides in some respects, that the person at the border should be entitled to some independent assessment of what the situation is with respect to asylum, and that assessment is, in our view, the right to counsel.

It doesn't mean a whole hearing is triggered on the spot and everything else, but he should be entitled to consult with someone.

There are thousands upon thousands of people who are coming up, particularly from Central America these days, particularly from El Salvador, who are frightened and confused. They reach the border, and they face an immigration officer under this bill, and they are going to be turned away.

They should be entitled to some minimal due process and due process which we say is a right to counsel.

Mr. JUCEAM. Mr. Smith, in Mr. Roberts' written remarks, you see the reference to the *Caban* case of the United States citizen born in Puerto Rico who arrived with a birth certificate without a passport.

Mr. SMITH. I know the case.

Mr. JUCEAM. In any event, although some of these cases that we see are tips of the iceberg, and I will assume for every one at hand there are some more, and while also there are a lot of cases where there are claims that are frivolous, the concerns of a number of comments this morning is in drafting remedial legislation the committee considered that you are going to be drafting rather broad rules and you are going to need fine-tuning to administrative agencies.

Our concern has not been so much the notion there be rules, but they are often so broadly drafted and the agencies have so much discretion that we can find in the records of cases that thereafter come up the kinds of injustices which, if we reported item by item to the committee, they would say they didn't mean that.

Mr. SMITH. You know, that is a great argument for having a lawyer.

The second question. There is a rather pointed argument to be made about the fact if you have an amnesty legalization program, only 20 percent of the people who are eligible to participate will line up and come forward, and that has been the consensus from a number of large countries as well as our own particular experience.

Can anyone hazard a guess as to what you are going to do with all of those people who will then remain in the sector known as undocumented workers or illegal aliens when they don't come forward?

How do you get to those 80 percent who will never come forward, according to what we can see, because they are afraid. They maybe think they are going to be deported. They are afraid they are going to have to pay taxes they don't want to pay, and there are a large amount of illegal criminals among them, et cetera?

What are we to do about these people?

Mr. Ervin.

Mr. ERVIN. Mr. Chairman—if I address you correctly—Mr. Chairman, no one doubts that these aliens, whether at the border or elsewhere, are entitled to due process. Due process will also be equally applicable to those persons who do not come forward.

The question is really what is the law and whether the law can afford due process under the constitutional requirements. That will be up to you.

What we understand under the present law is they will be deported.

Mr. SHATTUCK. Mr. Chairman, let me just hazard a guess on that. I am not sure precisely, in answer to your question, what to do with the situation.

One thing to do is to adopt a legalization program which is sufficiently broad that there is not the confusion that particularly exists in the Senate legalization program, with a variety of tiers and levels and hurdles that you have to go through.

Mr. SMITH. Mr. Juceam just said he didn't want anything overly broad.

Mr. SHATTUCK. Well, that was what he said.

Mr. SMITH. You now have a conflict?

Mr. SHATTUCK. I am well aware of that, but then there is, of course, the question of public education and outreach, and I don't know what the experience has been in other countries with respect to that, but it is obviously a critical element in the bill, and I was pleased the chairman of the subcommittee pointed out that this bill is going to, in fact, address the cost aspects of this whole situation directly in the bill and not kick the thing up to the Appropriations Subcommittee.

This is, obviously, a critical element of cost.

Mr. SMITH. I think this is an area which frankly most people are overlooking. We are working a lot of ways and you're going to wind up with a great number of people who are not going to come forward and you're going to have the same number of undocumented workers. When you talk about rolling over employee sanctions, even if you've got a bill which goes in as implemented and then, as Miss Gonzalez said, when you have that done, you're going to have some ability then to roll on employee sanctions after a period of education and after a period of test in the field.



But you're going to have large numbers of undocumented aliens who will still not come forward. At that point what are you going to do?

Ms. GONZALEZ. I have a suggestion that I have not thought out thoroughly yet, but one possibility.

Mr. SMITH. Excuse me. I'm sorry. Now, the second bell rang and I didn't know that. I have to go to vote; I'm just going to adjourn the hearing.

The chairman should be back in about 10 minutes and we will resume at that time.

I believe we will resume with this panel, so any final questions may be asked of this panel. Mr. McCollum had some time reserved. [Recess.]

Mr. MAZZOLI. The subcommittee will come to order. I think the gentleman from Florida had a question.

Yes? The gentleman is recognized for 5 minutes.

Mr. MCCOLLUM. I would like first of all to say hello and welcome to Mr. Ervin, a very distinguished member of the Florida bar, and though we have had some obvious disagreements with ABA policy and maybe the procedure today, that does not in any way detract from the fact we from Florida, particularly who know of your good work and long service to the profession, are very pleased to have you here today and that you are forthcoming in presenting the ABA's position.

Mr. ERVIN. Thank you, Mr. McCollum.

Mr. MCCOLLUM. I would like to also comment without elaboration that I personally do disagree with the ABA decision and regret we didn't have input, but I'm going to belabor that.

I'm going to move to a question just to get this on the record. Mr. Shattuck, the last time you testified before us—or at least during 1981—you probably have been back more than once since then. I'm not sure how many.

Mr. SHATTUCK. It was more than three times.

Mr. MCCOLLUM. Happy to have you. Your input is almost always welcome and enlightening and on this particular issue I recall your having stated the ACLU did support the Select Commission's recommendation of the article I court.

That is not of course in our bill as such. We received the various testimony of the last couple of weeks like Father Hesburgh and others who said while they think the adjudication procedures we have in here have perhaps been an improvement over what exists, some this morning have commented on the things they don't like about what is in there.

But with the exception of Mr. Roberts, whose testimony of course I was present for, I have not with this panel discussed their preferences.

If you had a preference, would the ACLU still support the article I court?

Mr. SHATTUCK. Well, you're staging my memory and I don't recall on that occasion if there was any legislation pending, and you were commenting broadly on the context, and at that stage, as the Chairman recalls, there was a concern about the streamlining of the adjudication of these cases involving asylum and deporta-



tion, and there was a concern that we share in the sense that it looked as if it was appropriate to do some streamlining.

I think the independent administrative process that has been developed in this legislation is far preferable in my view to an article I court to the extent that article III courts continued to have jurisdiction over viewing the administrative procedure, and at this stage I think we would not continue to support an article I court.

We prefer to see the independent adjudication process and article III review in the areas we have outlined in our statement.

Mr. McCOLLUM. Following up on that, one of the questions I have is just how independent what we have created would really be? I assume it's fairly independent, although I still prefer an article I court.

Mr. Roberts, you testified earlier this morning—I understand, though I wasn't here—but those who were indicated a concern that even though we have created a somewhat independent status for the appellant process, within what will be immigration appeals and so forth, that it's still within the Department of Justice and somehow that's going to result in an influence by the Attorney General.

Could you elaborate on those concerns for us? I am concerned. If I'm wrong about my impression, even though I personally prefer an article I court, that what we have done I thought was getting, even though technically under the Justice Department, completely out of the opportunity for the AG to do anything with the Board.

Mr. ROBERTS. I share your concern. I too, as you know, have written strongly in favor of the article I court. I am glad to see that the Justice Department has already taken some steps to cure some of the deficiencies that prompted my concerns, but I don't think they go far enough.

I think your bill is much, much better because for one thing it does create judges who are independent in a true sense—presidentially appointed board members who would have senatorial confirmation.

That, I think, would likely attract the highest caliber of judges and they are needed. Insofar as concerns the trial judges, the administrative law judges, they would be appointed under the Administrative Procedure Act, which is designed to give them independence, tenure and so on, and to insure independence of judgment.

The only problem with that is that recently there has appeared not only on the horizon but in actual fact a tendency on the part of one agency, at least, to try to lean on its administrative law judges.

There has been some litigation—I refer to it in my written material—in which I think there were administrative law judges in the Department of HHS. They were hearing black lung cases and they came to too many decisions in favor of the claimant, and as a result there was a procedure whereby they were being graded. Those who gave too many decisions in favor of the claimant were receiving poor grades.

One of them started this action and the court held that he lacked standing, but the fact remains that this is apparently a possibility with even administrative law judges under the APA.

I would like to see judges who are completely out from under the control of the agency that enforces the law. Just a few years ago

the Associate Attorney General came out with a point of view that the exclusionary rule does not apply in civil proceedings.

Now, the Board of Immigration Appeals had for many, many years applied the exclusionary rule in deportation proceedings, taking it for granted that it applies. There have been court decisions premised on that assumption.

Well, all of a sudden the Board reversed itself. It came out with a decision, *Matter of Sandoval*, which is cited in the material I have filed with the committee, in which they say the exclusionary rule does not apply.

There was a dissenting opinion by one of the Board members and he mentioned the Board should be independent and he referred to this memorandum of the Associate Attorney General who happened to supervise the Board at that time and still supervises the Board under the present organization.

All I'm saying is that that sort of possible pressure should be removed. The only way I know of removing it is an article I court. But short of that, I think that this bill you have proposed is the best I have seen yet. It's certainly a much better bill than the Senate bill which would still have everybody directly appointed by and under the control of the Attorney General.

Mr. McCOLLUM. I appreciate that very much and I appreciate your comments about the better quality of what we have in this bill presently, even though you prefer the article I court.

Does your primary concern with our version of this then go to the trial judges who are still administrative law judges under the Administrative Procedures Act?

Mr. ROBERTS. That is one of my concerns because unless they are really independent, they can wreak havoc with the system. After all, they are the triers of the facts. They make the fact-findings, and by and large their assessments of fact are accepted on appeal, their assessment as to credibility.

I must say this: I have had enough experience with reviewing records made by various immigration judges to know that they are not all of the same caliber.

Mr. MAZZOLI. The gentleman's time has expired. You'll probably have another turn. Let me yield myself 5 minutes.

Mr. JUCEAM, I was interested in your statement about labor certification for immigrants. You were saying that to go to a national review solely is, in your judgment, not the way it ought to go, there should be some flexibility.

Now, you might be pleased to know that that matter has been brought to us by two other groups in testimony and I think the panel is probably disposed to agree that not every case should be decided on the basis of national data.

I think you're probably supportive of this view that there ought to be a national test, but then if you could make a case, you might go for a local survey.

Mr. JUCEAM. I think some of the comment you, Mr. Chairman, recognizes—even the statement of the Secretary of Labor recognizes that there would still be some kind of unspecified individual labor certification.

But I would propose not tinkering, I would propose a radical change in the system and I will give it to you in about 1 minute.



Let's take the example of a household worker who is to live in. A large number of acrimony in the labor area results in that job occupation and time and again we know that in many parts of this country there are no U.S. persons ready, willing, and able and qualified to do that job. We just know it.

We yet make many people go through a separate application with advertising each time. I figure somewhere between 12—10 and 12,000 per case of Government expense for approved labor certifications.

I have another way. Take a form of four parts. You put in it the job, the employer's name, the duties to be done, use the dictionary of occupational titles, how many other aliens have been employed, if any, by virtue of labor certifications, and you file it with the Department of Labor with a copy going to a State employment office.

That form, if the Labor Department does not interpose an objection in 60 days and the State people don't interpose an objection in 60 days, with a copy on file so any labor union can interpose an objection in 60 days, will after the consular post or the immigration office designated on the form be deemed evidence the job is one an alien should fill.

Now that means nobody—absolutely nobody—after the first 6 months to 1 year of administration will be in trouble in jobs that are clearly in short supply in different parts of this country.

Legal secretaries in New York, the same thing. It would eliminate for certain kinds of jobs that are regularly tested by the present system and we would then have a document which no one even has to review.

Now, how do you get the objection statement? We have a system now that where somebody has a problem with a filing before a consular official or INS, a simple, two-word designation "visas November" is the form for the State Department saying "Stop what you're doing. We've got a problem."

Now it may take 6 months to unravel the problem, but absent somebody intervening and saying "stop," the document is good.

Now, that has been proposed but never really pursued. It was proposed to the Select Commission. Now, whether it's that form which I have just suggested, or some other form, I'm suggesting that before this subcommittee we have not focused in the last year and a half on this part of the bill nor do I think we worked hard enough to explore other kinds of opportunities that would dismantle the very costly system we now have.

Mr. MAZZOLI. So your view is to put this off.

Mr. JUCEAM. Yes, sir, now, if we have to go with the system we've got here because it sits properly, Mr. Chairman, I think that the main concern I have is with judicial review of regulations on the standards you propose.

But not only propose limiting judicial review of the individual cases but even the regulatory materials the Secretary adopts will have a full review, and as cited on page 12 of my remarks, for the last 5 years the Secretary of Labor had the opportunity and had been urged to adopt regulations to streamline the process, to narrow areas of acrimony, and the bottom line: they were not inaccurate. Not all were wise, but there was nothing done.

Mr. MAZZOLI. Thank you, Mr. Juceam. I appreciate that very much.

Mr. Roberts, I have never practiced immigration law so I am learning as I'm going, but I was reading your statement last night and I was interested in two or three things and I wonder if I might pursue one of them, and I will yield to my friend from Florida for his questions and maybe come back.

You say on page 3 and page 4 of your statement that there is a misunderstanding as to exactly what is impacting the asylum system and what is causing the system to bog down. You say it's not judicial review, but rather a lot of other things including lack of resources for the INS, lack of quick action on these cases.

Your basic statement is that some 3,700 exclusion hearings and 46,000 hearings of deportation cases and with all that load there are just a few hundred appeals.

May I ask you this: Are those appeals basically class action appeals so that you're bogging down thousands of people?

Mr. ROBERTS. No; I was not referring to class action there.

Mr. MAZZOLI. These are individual appeals?

Mr. ROBERTS. These are individual cases; at least I gather they are.

Now of course there are class actions. The Haitian refugee case is a classic one and I think that was dealt with by the chairman of the Judiciary Committee, Mr. Rodino—I'm sorry, it was the committee report which referred to that.

Mr. MAZZOLI. That's right. I read that. That was also in the ACLU statement today, the language taken from our report of last year.

Mr. ROBERTS. The point I was trying to make, frankly, is that it is not these individual cases which are keeping the INS from deporting deportable aliens.

Mr. MAZZOLI. Well, I want to get back to that point. It's an interesting one because there is another body of feeling on that, and that is that the availability of all the appeals just guarantees that every avenue will be explored, which means that in effect no one is really ever deported. That's the understanding.

My time has expired. The gentleman from Florida is recognized.

Mr. McCOLLUM. I would just like to comment on the chairman's questioning line, that I hope this subcommittee, whether in connection with this or future opportunities will explore and oversight the whole asylum process as it now is being conducted, because I think it's really critical and I haven't had a chance to talk about it.

I would like to ask a question to Mr. Juceam. In your text of testimony, you say the section 107(b)(6) of our proposed bill requires the board to render appellate decisions respecting asylum applications, and I will quote, "not later than 60 days after the appeal is filed."

It provides, however, no remedy for failure to comply with the time limitation. In view of the bill's limits on judicial review, the subcommittee should specify remedies for noncompliance.

What remedy do you suggest?

Mr. JUCEAM. I didn't suggest one because I wasn't quite sure what objective you have in mind. Because if part of the objective of the provision is that you want asylum application decided quickly



and it's to exhort the board to act within that time period, the remedy of having the appeal granted either way, for the Government or for the alien, whoever's appeal it may be, will be one way of coming out of it.

So that when the board fails to act, if it does, someone doesn't have to bring a declaratory judgment suit to compel.

Either you have a mandamus procedure, or you have a declaratory judgment procedure. But since our objective here is to limit the kinds of additional other forum remedies that might be available, the only self-executing remedy that I can conceive of is regardless of whose appeal it is, then it would be deemed that the appeal will either be granted or denied, with the party who wins or loses having such further right of appeal as would be provided in the statute, had the decision actually been written that way.

Mr. McCOLLUM. In other words, if we would write it in the law, one party or the other wins by virtue of the fact nobody decided anything.

Mr. JUCEAM. That's correct. Now, the problem with that remedy is that since the bill is to otherwise remove appeals of that body, there would be no other forum available in order to then take it to the next review stage.

So that we didn't come up with an answer because I wanted to ask the committee and the staff if my interpretation of what you had in mind was so.

Then to call into play the notion that if there is no appeal from such a decision—deemed a decision, what we really need is something more than simply a command to do it within 60 days.

Mr. McCOLLUM. Well, that's at least this persons intent; and I was a relatively important player in the writing of some of these time requirements into this bill, and realize that objectively it's difficult to place time requirements at all on any cause at any time without punishment or penalties, which we don't want to see happen.

Consequently, to a large extent, it is a moral suasion rather than a technically enforceable suasion that's there, to a large extent.

So consequently, any discussions you have about the manner in which we might proceed to achieve the objective of speed through the process will be most welcome.

Mr. JUCEAM. The only one I can leave you with very quickly is in the commentary to the bill, the committee urged that the Board of Immigration Appeals of the U.S. Immigration Board in constructing its rules, would develop priorities which would take into account the declaratory provision of the statute.

Mr. McCOLLUM. I have a question for Mr. Ervin. He indicated something very tantalizing to me in his first opening statement, and I'm going to ask him the question he wanted to be asked about: Miami and what's going on down there.

You, obviously, have and I know you do have first-hand experience with the pro bono work. I know INS had 86,000 cases backlogged, and had 110,000.

I don't know what happened to the other 30,000. It would be a good reason to have oversight right now. But we know we've got a bunch of Haitians down there—1,100 or more—and only 66 hearings. They were released by Crome as of a couple of weeks ago.

Could you elaborate on that, Mr. Ervin?

Mr. ERVIN. Yes, Mr. McCollum. To some degree, on the pure statistics as of February 17 of this year, we felt there were—our information, largely from INS, Immigration and Naturalization Service, indicates 1,769 undocumented Haitians in the United States, who are seeking political asylum in a different category.

Of those, 910 are in Florida. The remainder are scattered in 23 other States, and in 161 communities. The ABA, other organizations are providing pro bono services in their further organizations, making a substantial contribution.

We only have a broad umbrella, you might say. We have developed 48 project coordinators at that point. That is, coordinators who will supervise the providing of pro bono counsel.

At that time, 1,159 of the Haitians were represented. Now, that is approximately 65 percent of them. 750 lawyers were involved, give or take 10 or 15 one way or another.

We were encountering difficulties, as was INS, because of language barriers. These people speak Creole, as you know, which means a pro bono lawyer immediately has communications problems.

We are having geographic problems because many of them are scattered in different States and different parts of Florida.

So it's a matter of getting pro bono services. The lawyer is free, but there being no expense money account available to them, and they have to do their own traveling, have to get interpreters.

So there was some impediments. It was not an easy task. The ABA feels the task has been a successful one. We volunteered to provide pro bono lawyers. I said volunteered because the Attorney General of the United States asked Spellman in these cases to see if we could not get the organized bar groups and other groups to provide legal services on a pro bono basis.

I believe, I do not have current figures on the number of representations, but it is much greater at this time than the mere, say, 65 percent of them.

The real issues are those again referred to by Mr. Smith and others here—due process. What are they entitled to? As a procedure that has to be followed, that requires a judge or an examiner to review each of these cases after application is made and submitted to the State Department, and the State Department gets comments back to INS.

Mr. MCCOLLUM. Do you believe those who are represented, the 1,159, as of February 17, that there is a reasonable expeditious movement of those cases currently within the hearing process?

What gets me, I understood from INS at one time it may take up to 2 years just to get through the first stage. Is that still what you see?

Mr. ERVIN. I don't see it as being that at all, and I'm not going to blind-side INS here, who may or may not have a representative here.

There have been some differences between Spellman and INS because of our differences, and INS has a right to complain, I guess.

We weren't providing immigration lawyers. We had to train lawyers who are working in an obscure field, and we are endeavoring to respond to this need, as we always do.



Mr. McCOLLUM. I think it is very commendable. I know my time has expired.

Mr. MAZZOLI. I think it has, too.

We were down there with the gentleman from Florida a year and-a-half ago, and I think there is some activity that the Bar is engaging in, and it seemed then we were on the verge of getting something started.

Now, a year and-a-half later, we are still on the verge. We haven't gained much, but it isn't because you haven't tried. I guess it's just because of the problems.

Also, I'd like to ask you a question. Earlier in the day, we heard from Rev. Father Adrian that 99 percent of the people show up.

Has that been your experience?

Mr. ERVIN. I think you also heard from Mr. Smith that 99 percent of these Haitians have shown up. It shows something of their respect for our system, which they don't understand, but they are trying to comply with.

There have been some failures to appear.

Mr. MAZZOLI. Of course. My question is is anyone—is 99 percent an accurate figure?

Mr. ERVIN. We believe it is.

Mr. MAZZOLI. Thank you. Let me take 5 minutes and just get into a couple of things.

Mr. Roberts, another interesting aspect of your statement concerns section 106(a)(3) which is the automatic and indefinite stay of deportation upon appeal.

You said that there seems to be a general agreement 30 days is not enough to prepare the appeal, that 6 months is what it ought to be.

Mr. Roberts says there's another way to handle it, too, and that is to stay within 30 days, in order that there be some examination for frivolous claims or specious or unfounded claims and appeals, that they be kind of a wintering process. Thirty days, and then he suggests a procedure in which counsel representing INS review the record.

If it's agreed that there probably is substance to the appeal, then 6 months would be the figure for the actual development of the appeal.

Mr. Roberts, as a practitioner and expert in the field, you advance that not only as an interesting suggestion, but a doable one?

Mr. ROBERTS. First, let me make it clear, I'm not a practitioner. I'm an editor in this field.

Mr. MAZZOLI. Used to be.

Mr. ROBERTS. But I have had a lot of experience in litigation, because I was in charge of litigation under the Immigration and Nationality laws for the Department of Justice when I was with them. I have had a lot of experience with section 106.

Now, the mere fact that I recommend a temporary stay of deportation doesn't mean that I advocate it. I think the present system is working fairly decently.

All I'm saying is that in lieu of eliminating the 6 months, that you really want to get at the core, and a much better way of doing it, which is don't have an indefinite stay of deportation. Have a limited stay of deportation, so any alien who feels he's aggrieved

will have an opportunity to get into court before he is whisked out of the country by the Immigration Service.

That has happened. I'm speaking about them being whisked out. All this would be comparable to the period of a temporary restraining order in a district court.

You don't get a preliminary injunction immediately. You get a temporary restraining order, after which you must convince the court that there is some merit, that you are likely to succeed, before the court will issue a preliminary injunction.

Mr. MAZZOLI. Mr. Juceam, let me ask you for some brief comments on the point as a practitioner. How do you see that?

Mr. JUCEAM. Well, I think it's workable. I'm not sure that 30 as opposed to 45 days would not be more in order. But Mr. Chairman, there are more than 15 million entries made in the United States every year.

A large number of those who come here on the southern border get turned away without ever asserting legal rights.

In other parts of the country, in Canada and the Port of New York, they get turned away without asserting legal rights.

Many of the people go through deportation or exclusion processes that don't have a lawyer. They waive a lawyer, and when they lose it, never bother to appeal at all.

The problem I have in terms of time limits is for the person who goes through the process with no representative or lawyer, who comes to a lawyer, actually loses, 2 or 3 days, or 6 days later, and the lawyer has no record.

My concern about your time limit is just to hear the alien explain what went on doesn't help the lawyer decide whether it's a good appeal or not.

Mr. MAZZOLI. Let me ask Mr. Shattuck. You may remember in our bill originally we had a period of time which I believe was 30 days to file asylum claims. Then we heard statements from practitioners and other who said that may not be time enough.

So then we decided that notice of intent should be filed with 14 days and the completed petition within the next 30 days.

I wonder, is there anything in that formulation that might work here?

Is there anything that can be done legally to defend cases where a person hasn't been represented, in which the 30 days may well be time enough for his or her lawyer to appeal, and where you have not been represented, and a person has to play catch-up?

Mr. Shattuck?

Mr. SHATTUCK. Well, I think that's a very important point. I will observe as I think your question implied, Mr. Chairman, that there is a difference, clearly, between a situation where one has not previously had counsel, and all of a sudden they're in the process of preparing an appeal on another case.

I don't know whether the time periods Mr. Juceam is proposing are the appropriate ones. I would yield to the practitioner on that point.

But there is a question as to the constitutional matter, and as a matter of due process, if someone has appointed counsel then has to very quickly prepare an appeal, there really is a problem.



Whereas one who has had a lawyer all along is able to prepare it and perhaps doesn't have a great due-process problem.

Mr. MAZZOLI. It's very interesting; and my time has expired. I mean there is a view and there is a perception that if a lawyer wants to bog the system down, and if a lawyer has a person who has the money to pay and stay in the country, that person can stay.

Simply and purely and logically, that person will never be deported.

Mr. ROBERTS. It's not just that simple.

Mr. MAZZOLI. The people object, not where the person has fairly pursued the case and made a case, as you say, but people object to the fact that it can be done simply because the lawyers and the laws and the loopholes and protracted appeals upon appeal, upon review, upon review.

And so our changes have been developed in the spirit of trying to be sure that everyone has an appeal, that there is no curtailment of due process, that everyone has an opportunity to develop a case, but do it in a streamlined form. At some logical point when all these rights have been bundled together then appeal them.

The judge looks at all of them collectively. But once they do that, then that's it, and the ball game is over. Because if the lawyers haven't been able to collect all the rights and develop all the questions, then they shouldn't be allowed to go back and redo it once the circuit court has made its judgment.

So what we have tried to do is to make that kind of a streamlined but very fair approach. You know, it's a kind of an elusive goal.

Mr. ROBERTS. If I may speak to that, I would like to speak because I confronted this when I was in the Department of Justice.

At that time, this automatic stay of deportation bugged us. The lawyers were filing petitions for review all over. I had lawyers who represented the Government move for summary affirmance, and the court wouldn't hear of it because it was new then.

But little by little, they learned there are many cases in which the appeals are purely frivolous, and they have since adopted very effective procedures for dealing with this subject.

Mr. MAZZOLI. Is that the second circuit?

Mr. ROBERTS. The second circuit is one. There are others. As a matter of fact, in many circuits, they will not put the case down for oral argument.

It will be put down on the summary calendar unless they are satisfied there is a substantial legal question. That is not the problem.

True, there are individual cases which create havoc. The *Marcello* case, for example, although the late Jack Wasserman, who represented Marcello in most of that litigation, had the position that right was on his side. But that was a case in which a very skillful lawyer managed to keep his client in the United States for a generation.

He is still here. Some of it may be due to the fact that he came over here when he was—the alien came over here when he was 8 months old.

I'm not going into that, but cases in which process is abused are relatively minimal, and the courts are able to handle them.

Mr. MAZZOLI. Thank you very much.

Mr. SHATTUCK. Just two sentences. A point too important to overlook from my point of view. That is what the committee report demonstrates last year. Your committee report is that it is grossly unfair to charge the asylum adjudication process with the problems generally in the immigration field. The number of asylum cases is very small. That issue can be dealt with, we feel, properly and fairly, as we are recommending, without in any way suggesting that the process is going to break down.

The key passage is cited on page 7 of our statement, and I know you agree with it.

Mr. MAZZOLI. Thank you very much, gentleman and lady, and I defer to my friend from California.

Mr. LUNGREN. I'm sorry I missed some of this testimony, because of matters over on the floor, so I hope I'm not going over ground you have already had, Mr. Shattuck, but I am interested in what I perceive to be your concern about the paperwork verification requirement and obviously concerned about discrimination. We have attempted to try and reach a means of assisting in law enforcement purposes, enforcement of the employer's sanction, because we truly believe that it is got to be part of the package. We are then confronted with the question of how do we do it in a way that does not produce opportunities for discrimination that do not already exist.

I mean, I think that's a threshold question. We know there is discrimination. I happen to know there is discrimination in large measure against certain members of the Hispanic community because of the easy notion some have that some of them are illegal. In fact, they know they are illegal and they can treat them in ways we wouldn't allow them to be treated under the law. But they know these people are afraid of being revealed as being without documents. So in attempting to deal with that question we established an employer system which I think is fairly simple, you know, the two-document system. The employer does not have to go beyond to looking at documents to see whether they look all right.

I mean as long it doesn't look like a smudged copy of the Xerox next door at the drugstore, and he signs something to that effect, the employee signs a document saying he has a legal right to be here, and it's required of all employees, such that there won't be discrimination just against these people he might suspect would be here without papers and taking them on.

What is wrong with that approach? Doesn't that eliminate most of the civil liberties concerns that I know you have and have been expressing the past, if you accept the position that you have got to have some sort of workable employer sanction program?

Mr. SHATTUCK. With all due respect, no. We have, as I have said several times, closely studied the problem, and we think the crux of the problem is, your average employer is going to be caught between a rock and a hard place. The nature of the sanctions systems which is in place in the bill now and its application in individual cases of hiring of illegals is going to put that average employer on the spot and force him or her to choose between facing sanctions on the one hand for employment or unemployment.



Mr. LUNGREN. You mean you would prefer to go more toward the pattern and practice?

Mr. SHATTUCK. That's right. That's indeed what we are suggesting should be considered by the committee. We also think that as a practical matter the verification procedures that are imposed on all employers are themselves going to be discriminatory to the extent people who are going to face the verification process are those who are foreign-looking minority people.

Mr. LUNGREN. I don't understand that. I have heard it said, but I frankly don't understand it. If it's required of all, why will it only befall those who are foreign-looking? I'm not sure what foreign-looking is. In my district, I have got Hispanics, Koreans, Asians of all types, Irish and Swedish, and blacks.

Mr. SHATTUCK. Well, I mean the problem is, the employer is going to be making an on-the-spot judgment about whether he wants to risk hiring a particular person, and the risk is going to be greatest if there is the probability that person is, in fact, an illegal alien and is going to be great in the case of those who appear to be foreign, particularly in certain areas of the country.

Mr. LUNGREN. Illegal aliens are, by definition, not Americans. In the Southwest portion of the country they are predominantly Hispanic, although not all Hispanic, but at least over 50 percent, if you go by apprehension. So that would indicate to an employer that may be a person more likely than not. Right now, the employer, if he wants to follow the law has no means, really, to look at. We haven't defined the precise parameters, and maybe I'm not seeing it. But if we require it of all, unless you're suggesting most employees or a significant number of employers are by nature discriminatory and would use that as a means to discriminate, it actually takes away one means of discriminating against a group now, because we have set the precise procedure that an employer has to follow.

Mr. SHATTUCK. I think it is well-established that this would tilt the balance in favor of discrimination, even if the employer—and I'm not suggesting all employers are likely to be discriminatory—but even if the employer didn't want to, because you are going to face that very hard question of how to avoid the sanction system. That's why we think, and also, I think the Immigration and Naturalization Service is going to have a serious problem with it.

So, if you ask, as I know the subcommittee has repeatedly, INS takes the position that they too want to engage in the kind of enforcement you propose. That being the case, why not at least consider a pattern or practice threshold before you start getting into the whole question of accommodation of criminal sanctions and the paperwork requirements for the employee? That is the area that we are suggesting the subcommittee should look at.

I appreciate the fact that I have not presented you with an amendment. We aren't even endorsing an amendment at this stage, but we think this would be an improvement over the system in place now.

Mr. LUNGREN. Interestingly enough, I tried to get an amendment that was pattern and practice, as opposed to second or third offense, because I felt, in fact, that we ought to allow that flexibility

with respect to prosecutorial authority. So I endorse the direction you're moving.

Mr. SHATTUCK. If I could just add one thing, because I don't want it to be lost in the welter of discussion here. We also feel very strongly about the identification requirement and the verification procedures, and we think those invite additional problems of civil liberties, and for that reason we would say, only under a situation where an employer has been cited on a pattern or practice basis, should that employer then be required to make reports of new hiring and the kind of scrutiny that is suggested by a broad certification scheme, only to be targeted under those conditions.

Mr. MAZZOLI. Before we move on, I think the gentleman from ABA, Mr. Ervin has a response.

Mr. ERVIN. If I may make a comment on the question. In my state of Florida and Mr. McCollum's state, has over 1 million persons of Latin extraction. Perhaps 500,000 of them undocumented; perhaps 500,000 of them are American citizens. Spanish is still a kind of Latin language—not Castilian—Spanish is still prevalent, and many of those are good American citizens, third generation, and this is the way it is going to come under your bill is when the Immigration Service picks up the alien and says, "Where are you employed?" The alien then departs from the United States, one way or another, what is left of the employee is a notion the Immigration Service has picked up an alien who says he was employed and there will be no record of the employment at all. What I am concerned about is the bill not be structured in a way to induce an underground, clearly unlawful structure, with the end result that the alien finds that he is discriminated against even more, because now since he's a cash off-the-books employee in a five-man operation, where no one will have a record of employment, you are going to find that that alien, I think, is going to be a greater risk.

Mr. MAZZOLI. The gentleman's time has expired.

A very interesting discussion.

One of the things I'd like to see looked into, because Mr. Shattuck mentioned a concern the problem with EEOC dealing with employers of 15 and more, and also with being overworked and having a big backlog. I was wondering if maybe you could make or give the EEOC the opportunity, legally, to investigate cases under here for three or more.

In other words, even though the EEOC has a 15 threshold, we might reduce that threshold which then would allow us to have a very effective mechanism regarding unintended discrimination.

The gentleman from Florida is recognized.

Mr. MCCOLLUM. I can't resist because of so many comments this morning about the discrimination from making my own comments about that. I think that's the most misunderstood part of this bill. I can't conceive of how some people have come to the conclusion that an employer would discriminate more under this bill than under the present law—the bill we propose—for the simple reason he's so totally and absolutely protected if he can just get some production of documents that pretend to be whatever they are, and all he's got to do is record the fact he looked at them.

In fact, we had a witness in front of us the other day who scared me more than any other one that said we might have a loophole in



the law because of the fact somebody could know the person is an illegal alien but he takes all the steps we have provided and protects himself.

So I really think that though other criticism of employer sanctions might be justified and argued and debated, I just have to hear a really truly rationally thought out argument that this would cause more discrimination.

I want to comment on one thing too and ask a question related to this discussion the chairman brought up with a time period for filing notice of appeals.

Under the present Rules of Civil Procedure—and I used to practice trial law not that long ago—in the criminal area in a normal case we're talking about a criminal defendant taking an appeal only with a 10-day opportunity to take appeal.

In a civil case routinely where the Government is not involved, we have the same 30-day period that we've got in our bill here for taking the appeal.

The only time you can expand those would be in the case where the Government has the right to appeal in the criminal case to 30 days and when the Government does get involved as a party to 60 days in a civil case.

In both of those cases is a deference under the rule—the history of that the Government being involved—not to protect the defendant, the accused, civil party or whoever.

I don't think from my knowledge of the asylum cases and deportation cases that they are that complicated. I grant you there may be a problem if somebody doesn't have an attorney at the initial stage of the proceeding. But certainly with these Haitians, they're getting attorneys as a matter of right now. Whether we believe that should be the case or not, that's the way it is.

Why should we go further than the present Rules of Civil Procedure? This isn't one of those areas where I had any axe to grind in the writing up the speed-up process, but I just don't see why we should make an exception, which is what this would be to our present either criminal or civil Federal rules.

Could anybody address that?

Mr. ROBERTS. Could I? I think this is based on the realities. In a criminal case if a defendant is found guilty he soon has to go to jail or pay a fine, and in a civil case if there's a judgment for damages against him the plaintiff's attorney will see that an execution or writ of execution issues or whatever is needed to collect that judgment.

If the INS actually started to deport every alien who was deportable who exhausted his administrative remedies forthwith, then those aliens who would want to challenge it would go to court right away.

The fact is that INS does not execute the deportation orders promptly. It may be years before they get around to it.

Now, whatever the reason may be—I'm not critical of INS, but these are the facts. Many of the aliens who are the subject of final deportation orders are unrepresented and really they don't know what happened to them.

Nobody tells them they have a right of judicial review; they don't know anything about due process.

Mr. McCOLLUM. Mr. Roberts, suppose that occurs and I go to an attorney and whatever time period there is and he's got a voluminous amount of work, I still can file a notice of appeal and seek relief to amend that notice later if I find out other grounds or whatever. The notice of appeal itself in my practice of law has not been, except for getting under the wire and getting it filed, a really big deal, and it gets the process started. That's what bothers me.

I realize what you're saying is certainly valuable and true and I'm not trying to argue. I'm just trying to see if I was missing a point anywhere.

Mr. JUCEAM. Mr. McCollum, I think you're quite right. I don't think anyone here is objecting to the notion there be the kind of time limit you have in mind to simply file a notice of appeal. That is a 1-page document thing I appeal. The problem is setting forth in that appeal each and all the grounds and not being able to amend it or change it.

I think, if what you have in mind is a bill that says "within 30 days of the final order of deportation from a finished rate of appeal there must be," or in an asylum case with X period of time after the final order, that there has to be a notice of appeal filed, whether you have a lawyer or not.

I don't see anything wrong with the time limits you propose.

Mr. McCOLLUM. What about a case with the provision we have that says you have a time limit, but with leave of the court you've got 30 more days in which to amend your grounds, or something like that—15, 20, whatever is reasonable.

Mr. JUCEAM. The difficulty with that is the notion of the record upon which the appeal is taken, because the statute narrowly in asylum matters identifies the kinds of things you can appeal.

If a record is available, I see no problem setting a 30-day time limit from the date the record is available. I see no problem if you do that because sometimes these records are not available for many, many months.

Mr. McCOLLUM. Within some reasonable degree of discretion as to availability of the record of part of the appellant tribunal, to open up the door for additional grounds; then you don't have a problem?

Mr. JUCEAM. No, sir, and I would permit the Board of Immigration Appeals of the U.S. Immigration Board for good cause shown to set whatever time they thought was appropriate, and if the Government didn't like the time period, they'd move for summary disposition.

Mr. MAZZOLI. The gentleman's time has expired. The gentleman from Florida, Mr. Smith.

Mr. SMITH. Thank you, Mr. Chairman. I'm just curious. The petition for review which is notice of appeal in these cases, I was not aware that it required specific grounds—just general allegations—and as a result, why would you need the record?

Mr. JUCEAM. There is no problem as far as I'm concerned. There is no problem with the notion of having a record except if you're a lawyer and a client comes to you when it's all over and before you can assert grounds of appeal it seems to me you have an obligation to understand what occurred.

I don't want to advise——

Mr. SMITH. Not when the clock is running, Mr. Juceam. When the clock is running, Mr. Juceam, you know that very well, when the clock is running, you've got 30 days and if a client comes to you on the 25th or 26th day you're not going to stand there and say "Well, I don't know what the grounds are and I don't know whether I can do this."

Obviously, almost every practicing attorney I've ever run into in 19 years realizes that the petition in this case or the notice of appeal would have to be filed and then you look at the grounds.

It would be ideal to have it another way, but we're dealing with the real world and as some of the other people pointed out, some of these people don't even know that half the time. Even Mr. Roberts agreed that these people don't know what happened to them, and if they happened to be fortunate enough to wander into an attorney's office sometime after the process terminated at the first stage, are you going to stand there and insist they bring you a record?

I mean, we're dealing in the real world, you know.

Mr. Chairman, this is not knocking any of the witnesses. You have all done very capable jobs and so have many of the witnesses that have been here.

We must be smoking euphoria. I cannot believe what I hear. Everyone wants to make this so perfect that there's no way—no way in the world—that there's going to be any mistake made by INS, by Customs, by the court, by any official, by the country or by the potential deportee, immigrant, acceptee, or whatever you want to call them.

I cannot believe what I'm hearing. How in heaven's name do you think we're going to structure the best document mankind has ever seen from this pile of major problems that we are confronted with?

You talk about wanting now to go and have it run from the time the record is made, when you know very well 90 percent of the people you're dealing with don't even speak English. I can't believe what we're talking about.

If everyone is going to have somebody else's oxen gored and nobody's own oxen going to be gored, we're going to wind up 10 years down the road and Mr. Mazzoli will have less hair or it will be all gray.

Mr. MAZZOLI. Or totally bald.

Mr. SMITH. I tell you, most of the rest of us will have jumped ship. He's the only one that's going to stay.

Again, this is not a knock. I'm sitting here and what I'm hearing is that depressing. I cannot believe it. It's totally depressing.

Everyone wants to have their own little narrow interest preserved, and it's just not going to happen. I cannot believe that people will not finally understand that there's got to be a great deal of latitude when you're dealing with this issue because right now the issue is being framed by circumstances rather than by statute, and we want to bring it back the other way around.

Now, if I'm wrong, Mr. Chairman, I hope everybody contradicts me.

Mr. MAZZOLI. I think the gentleman could not have said it better. I hope we can have those words engraved and put up on the wall. I think the gentleman from Florida has said it all.



The gentleman is a quick study. He's been here 2 months and he's perceived exactly what is going on.

I have said it before. Everybody is looking for perfection and in the real world in which we live—and I don't only mean just on the Hill, I'm talking about the real world in which each one of us lives—there is no perfection.

You can't find perfection, and I keep asking the question, is the present situation better than the future situation would be with this bill with all of its pimples and warts and imperfections? I suggest to you the discrimination is so rank and so overwhelming now, at least, that anything that could happen unwittingly and unintended through our bill is a piece of cake.

I suggest to you that the overwhelming evidence is that people are being abused and oppressed and misused and treated as chattel right now today within arm's length of the Hill, in each one of the towns in which you gentlemen may live, and this bill offers—and everybody agrees it's a monster—a large step forward.

Yet we may not ever be able to pass this thing because everybody says yes, they're for the bill, but then they offer this long laundry list—the gentleman has pointed out—of defects. So when we have reached the end of our day and our friends on the floor say "But Ron, you said there was somebody for your bill," and I say "Yes, they are, the immigration lawyers are out for it, the ACLU is for it, the American Bar is for it, except they're not for this part of it and that part of it. But don't worry about that, they are for the bill." They say, "But Ron, that's not how we see it. We see they're against your bill." I say, "Well, you know, we'll take our chances."

The problem is that if we reach the end of the day, the legislative process day, and we don't pass a bill, I believe we're condemning millions of people in America to a fate worse than death in a sense, because humanity is being stripped from them, their dignity is being taken away from them every single moment of every single day. That is what they're going to be facing because the gentleman from Florida is correct: if we don't do it now, there ain't nobody going to be coming back to this in the near future in any comprehensive way.

If we don't deal with this in a symmetrical form, sensitive and humane, as we are doing now, you're going to get something, but it's going to be driven down your throats because of the general pique and frustration of the American people as reflected in our members, and you're going to get something, I guarantee, you can really write volumes and reams about as being unfair and as being one-sided.

So we offer you an imperfect bill, but as I said last year, it's the least imperfect bill that anyone of us has seen, and unless we have help from people—and we appreciate your attendance and your patience today, but unless we have help from people who are willing to swallow hard and say, "Look, we can be for something that isn't perfect; no matter what our membership says, we can be for something that isn't perfect," we're going to wind up without getting a bill, and I think our country is going to be worse off.

So I thank the gentleman for bringing it up.

Mr. ROBERTS. Mr. Chairman.



Mr. MAZZOLI. I think we have said what we want to say. Did you have a question?

I think the question was preliminary to the statement.

Thank you. We have another panel and they are on a very short time limit, so let me thank you again, Mr. Juceam, Mr. Irvine, Mr. Roberts and Miss Gonzalez and Mr. Shattuck.

Thank you for your help and we appreciate any information that you can send us.

Mr. JUCEAM. Mr. Chairman, just in closing, I think we all appreciate your remarks and those of Mr. Smith. I didn't propose what I think Mr. Smith thought I proposed, and I just want to make that clear.

I did not make a suggestion that the appeals run forever.

Mr. MAZZOLI. Let me just say, if you sat with us—the gentleman from Florida has been with us every single day in these hearings—if you sat with us through all this 7 days, I think the conclusion you would reach would be the conclusion he reached.

Despite the subtleness and differences and nuances, the conclusion we reached is that certain groups are not going to be for the bill, and I think that unfortunately is what we end up with. But we appreciate your help and look forward to working with you.

Mr. SMITH. Would the chairman yield? All I want to say is this: What frustrates me—and I have been in the legislative process for years—is that everything that is coming this way seems to contain one fabric, no string that ties it all together, and that is that the bill has the guts to be absolutely everything everyone wants, because that's the end of it.

I didn't know that Congress was going to be dismantled after this bill is passed.

What makes anyone who is involved in this subject believe that Congress cannot come back later on and fix something? The chairman has indicated, I think rather pointedly: "If we don't do something now the chances of getting it made better are worse than if we do something now and then come back and take a product which is admittedly somewhat imperfect and then fine-tune it."

If you don't get anything, you're never going to get anything. If you get something, I pledge to you I will be here to fine-tune that. Obviously, there will be problems.

Miss Gonzalez raised issues with sanctions which may very well be true in her area, and that's another problem. From place to place in the United States, the problems under the umbrella of the whole situation are very different.

But we've got to start somewhere, and this Congress is going to be here for a long time. Many of you will come back and tell us just how we screwed up in 1982 or 1983, and that's fine. You're entitled to it. That's what I'm waiting for. We always do things that are less than perfect the first time around.

Mr. MAZZOLI. I think my friend has hit it again. I just think the situation is bad. Everybody agrees with me to make it better and later on we'll make it even better than that.

We thank you all very much and look forward to working with you.

I would like to call forth our next panel. I understand that two members, Senator Roberti and Senator Hill, are under some time constraints.

Let me ask you to take the center two seats, and then I would also like to invite Mr. Deane Dana, member of the Board of Supervisors, county of Los Angeles; Mr. Matthew Coffey, executive director of the National Association of Counties; and Mr. James A. Krauskopf, commissioner of the Human Resources Administration of the city of New York, on behalf of the U.S. Conference of Mayors; and Mr. David Pingree, secretary of the Florida Department of Health and Rehabilitative Services, on behalf of the National Governors' Association.

Let me say, first of all, this is a meeting of old friends. All of you have been here before, and we appreciate all of you being here, particularly those coming from California and distant States.

I recognize Senator Roberti and then Senator Hill, who have to leave. We understand they have a time problem.

**TESTIMONY OF HON. DAVID ROBERTI, SENATOR, CALIFORNIA STATE SENATE, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, ACCOMPANIED BY HON. JOHN HILL, SENATOR, FLORIDA STATE SENATE; DEANE DANA, MEMBER, BOARD OF SUPERVISORS, COUNTY OF LOS ANGELES; MATTHEW COFFEY, EXECUTIVE DIRECTOR, NATIONAL ASSOCIATION OF COUNTIES; JAMES A. KRAUSKOPF, COMMISSIONER, HUMAN RESOURCES ADMINISTRATION, CITY OF NEW YORK, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS; AND DAVID PINGREE, SECRETARY, FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION**

Senator ROBERTI. Thank you very much, Mr. Chairman, distinguished members of the committee.

I am testifying on behalf of the National Conference of State Legislatures on H.R. 1510, and the NCSL is the official representative of the Nation's 7,500 State lawmakers.

We have recently formulated a task force on refugee and immigration problems, and Senator Hill of Miami, Fla., whose area is one of the most severely impacted, is also a member of the committee and will be testifying.

Our task force was created last July and has been charged with the responsibility of providing information, direction, and assistance to State legislatures on refugee and immigration reform problems.

Currently, 13 State legislatures are represented—Arizona, California, Colorado, Florida, Illinois, and Texas being those that participated the longest. We will be meeting next month to revise and update NCSL policy on immigration reform and refugee assistance and will be certain to share any modifications of any policy positions we have with you.

The NCSL supports and respects your desire to improve, update, and increase the effectiveness of the Nation's immigration laws, and we also share your concern to come forward with a law that is

of first impression and one which, obviously, cannot solve all the problems before us, but one which is much needed by all of us.

We commend you for your diligence and your perseverance in this area, and we hope to see a piece of legislation because the legislation which you propose is better than the current situation.

We support in our policy position an equitable system of legal immigration and an effective method to discourage and control illegal immigration to this country.

To meet these goals, the NCSL is supportive of efforts to protect the integrity of our borders and also to discourage employers from knowingly hiring undocumented workers.

The development of a sound immigration policy for the nation is clearly a responsibility of the Federal Government, however, and the impact on State and local governments must be addressed and recognized.

Obviously, this brings us to a recurring refrain, which I know you hear often and which, you know, is a concern of ours—and that is money.

NCSL has no policy on legalization at this time; however, we do feel that if legalization is to become a reality, State and local governments must be fully reimbursed for the cost of providing public assistance and health care to newly legalized aliens during a limited transition period.

The development of a sound and effective legalization program must be built upon a strong partnership between the Federal, State, and local governments, and the NCSL is pleased that the committee, in its wisdom, last year included a reimbursement provision in the bill and that in your current draft of this year's bill you have that same reimbursement provision.

We hope you diligently work for its inclusion as the legislation proceeds in Congress.

NCSL believes the temporary reimbursement program provided in the Edwards amendment is a part of the fundamental partnership from which a legalization program must be built.

I am aware, Mr. Chairman, that despite the committee's adoption of the Edwards amendment, some members have major reservations and concerns with respect to the provision. We hope we can maintain your support on the Edwards amendment because the block grant program provided for in the Senate bill and supported by the administration is unacceptable and inadequate.

In recent testimony before the subcommittee, Attorney General Smith indicated that the administration is opposed to the Edwards amendment, primarily because of anticipated costs of the provision. The administration estimates that the Edwards amendment and the exception to the Federal benefit ineligibility provisions in the bill would cost the Federal Government approximately \$4 billion between 1984 and 1987, while the block grant program would cost \$1.7 billion.

I must emphasize that the Edwards amendment reflects estimated actual costs, while the block grants would merely offset State and local costs and reflects what the administration is willing to spend, regardless of real costs.

If, in fact, the Federal Government, however, cannot afford to meet the costs of the proposed amnesty program because of the na-



tional economy, then it is reasonable to assume the State and local governments cannot either.

The National Conference of State Legislatures recently conducted a nationwide survey of legislative fiscal officers in an effort to assess the fiscal condition of the States, and we found that at the end of the current year 19 States projected deficits in their general funds and another 12 States anticipate having a year-end balance of only 1 percent reserve; 35 States have reduced spending for the current fiscal year.

All regions of the country have been affected by fiscal miseries and at least 16 States right now will end the current year 1983 with a deficit unless present policies are changed.

Certainly, new immigration and the influx of population is one of the major causes for States having expanding costs, along with the recession. Currently, the national impact of slow economic growth and high unemployment is not conducive to healthy State economies.

Therefore, we petition you and appeal to you to maintain the language of last year's bill, currently in this year's bill, and give the State legislatures full funding.

Speaking also on behalf of our organization now, Senator Hill.

Mr. MAZZOLI. Thank you very much, Senator Roberti.

Senator Hill, you are recognized for 5 minutes.

Senator HILL. Thank you, Mr. Chairman and members of the subcommittee.

It is an honor to have the opportunity to appear today on behalf of the National Conference of State Legislatures to share my thoughts with you regarding the Immigration Reform and Control Act of 1983, H.R. 1510. I am certain you are aware of NCSL's position on behalf of some 7,500 representatives of State governments.

My name is John Hill. I am senate majority leader for the Florida Senate and a member of the NCSL Task Force on Refugees and Immigration.

The task force is charged with responsibility for providing information, direction, and assistance to State legislatures on refugee and immigration reform concerns.

Thirteen States are represented in this group: Arizona, California, Florida, Illinois, Louisiana, Michigan, Minnesota, New Jersey, New York, Oregon, and Pennsylvania. I am basically opposed to amnesty unless we can be assured of the security of our borders, and this feeling is perhaps generated by the fact the State of Florida has somewhere in the neighborhood of 8,000 miles of vulnerable shoreline for people to come to this country.

I think that every time that there is a change of government in South America, Florida is susceptible to an influx of refugees. We have approximately in Dade County alone between 725,000 to 750,000 people.

The NCSL supports and respects your desire to improve, update, and increase the effectiveness of the nation's immigration laws. I commend all of you for your diligence and perseverance in this area.

NCSL has taken no position on the denial of Federal benefits to persons legalized under the act, although we believe it will create a greater demand for State and local assistance.



We are concerned about efforts to minimize the potential impact of the legalization program on State and local governments by implying that because many illegal aliens currently residing here are employed and contributing to State and local revenue base. State and local assistance should be offset in some way to account for these contributions.

The same workers who contribute to the State and local revenues also contribute to the Federal income tax; however, they will be ineligible for most forms of Federal assistance. While the Federal Government can clearly deny benefits to persons legalized under the act, there is some question as to whether States, even if authorized by Federal legislation, may take similar action.

Even if State and local governments may deny assistance to persons legalized under the act, it is unlikely such action would be taken.

It must be recognized that these are future citizens of the United States and residents of our country. We cannot afford to deny basic and fundamental humanitarian care to these people, nor can we afford to pay for this assistance out of budgets.

The administration has suggested the Edwards amendment provides no incentive for State and local governments to control program costs. The reimbursement provisions in H.R. 1510 is a temporary one.

State and local governments will ultimately be responsible for the cost of providing assistance to persons legalized under the act, a fact which I believe provides great incentive for States and local governments to carefully scrutinize any program used. A carefully monitored program, with insufficient funds, however, is not conducive to the development of an equitable or humanitarian legalization program.

NCSL is not seeking reimbursement as a financial windfall. We are seeking reasonable financial assistance so that State and local governments can provide a humanitarian environment for persons who are likely to become full U.S. citizens.

The Attorney General characterized a portion of the Edwards amendment that provides for assistance to impacted school districts as unwarranted.

The children and young adults who have received this assistance are likely to become future U.S. citizens also. If we fail to provide adequate educational opportunities to them, it is likely that they will become permanently dependent on Federal, State, and/or local assistance.

The education assistance provision in H.R. 1510 does not provide for reimbursement of the cost of educating persons legalized under the act. NCSL envisions this program as one that will assist the States in providing special educational instruction and services to persons legalized under the act.

As you know, the educational assistance provision is subject to appropriations and is clearly intended to offset the extraordinary costs associated with providing quality educational opportunities to these future citizens.

NCSL commends the committee for including such provision and would urge you to retain this important provision during future deliberations on H.R. 1510.

Finally, there has been little discussion of how the actual processing of applications for legalization will be handled. This is a matter that concerns us and one which we hope you will work closely with the Immigration and Naturalization Service on.

NCSL encourages you to require the INS to work closely with groups such as NCSL as well as state and local officials in the development of this processing system. If the legalization system is adopted, it is imperative that State and local government officials be kept informed of the matter.

In closing, we would like to emphasize that NCSL believes that immigration reform is necessary and that action should be taken. NCSL must be insistent on reimbursement provisions, however, because we believe that if there is to be legalization, full reimbursement for State and local costs within the limitations of the Edwards amendment is an integral part of such a program.

Very basically, I believe that the development of a sound immigration policy for the Nation of course is clearly a responsibility of the Federal Government.

Finally, immigration must provide for an equitable system for legal immigration and an effective method to discourage and control illegal immigration in this country. If legalization of aliens is to become a reality, State and local governments should be fully reimbursed.

Mr. MAZZOLI. Senator, I am sorry to bother you, and I hate to interrupt you, but your time has expired. If you can wrap it up in 1 minute.

Senator HILL. I have one other item. I just feel if the Federal Government cannot provide the dollars to fund the program because of the state of the economy at this time, I don't believe it is reasonable to feel that the States can assume that responsibility.

Thank you, Mr. Chairman. I apologize for running over.

Mr. MAZZOLI. No, no. Thank you very much. You gentlemen have been very helpful, and to concentrate all your thoughts in 5 minutes is almost impossible.

[The complete statement follows:]



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STATEMENT OF

SENATOR DAVID ROBERTI

CHAIRMAN, NCSL TASK FORCE ON REFUGEES AND IMMIGRATION

AND

SENATOR JOHN A. HILL

ON BEHALF OF THE

NATIONAL CONFERENCE OF STATE LEGISLATURES

BEFORE THE

SUBCOMMITTEE ON REFUGEES, IMMIGRATION AND INTERNATIONAL LAW

ON

IMMIGRATION REFORM AND CONTROL ACT OF 1983

MARCH 16, 1983

WASHINGTON, D.C.

MR. CHAIRMAN AND DISTINGUISHED MEMBERS OF THE COMMITTEE, IT IS INDEED A PLEASURE TO APPEAR BEFORE YOU TODAY TO PRESENT TESTIMONY ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES (NCSL) ON HR 1510, THE IMMIGRATION REFORM AND CONTROL ACT OF 1983. NCSL IS THE OFFICIAL REPRESENTATIVE OF THE NATION'S 7500 STATE LAW-MAKERS AND THEIR STAFFS. I AM SENATOR DAVID ROBERTI, PRESIDENT PRO TEM OF THE CALIFORNIA STATE SENATE AND CHAIRMAN OF THE RECENTLY ESTABLISHED NCSL TASK FORCE ON REFUGEES AND IMMIGRATION. ACCOMPANYING ME TODAY IS SENATOR JOHN HILL OF MIAMI, FLORIDA WHO SERVES ON THE TASK FORCE. THE NCSL TASK FORCE ON REFUGEES AND IMMIGRATION WAS CREATED LAST JULY AND IS CHARGED WITH THE RESPONSIBILITY OF PROVIDING INFORMATION, DIRECTION AND ASSISTANCE TO STATE LEGISLATURES ON REFUGEE AND IMMIGRATION REFORM CONCERNS. CURRENTLY THIRTEEN STATES (ARIZONA, CALIFORNIA, COLORADO, FLORIDA, ILLINOIS, LOUISIANA, MICHIGAN, MINNESOTA, NEW JERSEY, NEW YORK, OREGON, PENNSYLVANIA, AND TEXAS) HAVE MEMBERS ON THE TASK FORCE. WE WILL BE MEETING NEXT MONTH TO REVISE AND UPDATE NCSL POLICY ON REFUGEE ASSISTANCE AND IMMIGRATION REFORM AND WILL BE CERTAIN TO SHARE ANY MODIFICATIONS OF OUR POLICY WITH YOU.

NCSL SUPPORTS AND RESPECTS YOUR DESIRE TO IMPROVE, UPDATE AND INCREASE THE EFFECTIVENESS OF THE NATION'S IMMIGRATION LAWS. NCSL COMMENDS ALL OF YOU FOR YOUR DILLIGENCE AND PERSERVERENCE IN THIS AREA AND LOOKS FORWARD TO WORKING WITH YOU OVER THE COMING MONTHS ON THIS IMPORTANT PIECE OF LEGISLATION. NCSL BELIEVES THAT ULTIMATELY THE NATION'S IMMIGRATION POLICY MUST PROVIDE FOR:

- (1) AN EQUITABLE SYSTEM FOR LEGAL IMMIGRATION; AND



(2) AN EFFECTIVE METHOD TO DISCOURAGE AND CONTROL ILLEGAL IMMIGRATION  
TO THIS COUNTRY.

TO MEET THESE GOALS, NCSL IS SUPPORTIVE OF EFFORTS TO PROTECT THE INTEGRITY  
OF OUR BORDERS AND TO DISCOURAGE EMPLOYERS FROM KNOWINGLY HIRING  
UNDOCUMENTED WORKERS.

THE DEVELOPMENT OF A SOUND IMMIGRATION POLICY FOR THE NATION IS  
CLEARLY THE RESPONSIBILITY OF THE FEDERAL GOVERNMENT, HOWEVER, THE IMPACT  
ON STATE AND LOCAL GOVERNMENTS MUST BE RECOGNIZED AND ADDRESSED. NCSL HAS  
NO POLICY ON LEGALIZATION AT THIS TIME, HOWEVER, WE DO FEEL VERY STRONGLY  
THAT IF LEGALIZATION IS TO BECOME A REALITY, STATE AND LOCAL GOVERNMENTS  
SHOULD BE FULLY REIMBURSED FOR THE COST OF PROVIDING PUBLIC ASSISTANCE AND  
HEALTH CARE TO NEWLY LEGALIZED ALIENS DURING A LIMITED TRANSITION PERIOD.  
THE DEVELOPMENT OF A SOUND AND EFFECTIVE LEGALIZATION PROGRAM MUST BE BUILT  
UPON A STRONG PARTNERSHIP BETWEEN THE FEDERAL, STATE AND LOCAL GOVERNMENTS.  
NCSL IS PLEASED THAT THE COMMITTEE IN ITS WISDOM INCLUDED A REIMBURSEMENT  
PROVISION IN THE BILL IT REPORTED OUT LAST YEAR AND IN THE CURRENT BILL, HR  
1510. NCSL BELIEVES THAT THE TEMPORARY REIMBURSEMENT PROGRAM PROVIDED FOR  
IN THE "EDWARD'S AMENDMENT" IS PART OF THE FUNDAMENTAL PARTNERSHIP FROM  
WHICH SUCH A LEGALIZATION PROGRAM CAN BE BUILT. I AM AWARE MR. CHAIRMAN,  
THAT DESPITE THE COMMITTEE'S ADOPTION OF THE "EDWARD'S AMENDMENT," THAT  
SOME MEMBERS HAVE MAJOR RESERVATIONS AND CONCERNS WITH RESPECT TO THE  
PROVISION. WE HOPE THAT WE CAN MAINTAIN YOUR SUPPORT ON THE "EDWARD'S  
AMENDMENT," BECAUSE THE BLOCK GRANT PROGRAM PROVIDED FOR IN THE SENATE  
BILL, AND SUPPORTED BY THE ADMINISTRATION IS UNACCEPTABLE AND INADEQUATE.

IN RECENT TESTIMONY BEFORE THIS SUBCOMMITTEE, ATTORNEY GENERAL WILLIAM FRENCH SMITH INDICATED THAT THE ADMINISTRATION IS OPPOSED TO THE "EDWARD'S AMENDMENT" PRIMARILY BECAUSE OF THE ANTICIPATED COST OF THE PROVISION. THE ADMINISTRATION ESTIMATES THE "EDWARD'S AMENDMENT" AND THE EXCEPTION TO FEDERAL BENEFIT INELIGIBILITY PROVISIONS IN HR 1510 WOULD COST THE FEDERAL GOVERNMENT APPROXIMATELY \$4.0 BILLION BETWEEN 1984 AND 1987, WHILE THE BLOCK GRANT PROGRAM WOULD COST \$1.7 BILLION OVER THE SAME PERIOD. I MUST EMPHASIZE THAT THE "EDWARD'S AMENDMENT" REFLECTS ESTIMATED ACTUAL COSTS, WHILE THE BLOCK GRANT WOULD MERELY "OFFSET" STATE AND LOCAL COSTS, AND REFLECTS WHAT THE ADMINISTRATION IS WILLING TO SPEND REGARDLESS OF THE REAL COSTS. IF IN FACT THE FEDERAL GOVERNMENT CANNOT AFFORD TO MEET THE COSTS OF THE PROPOSED AMNESTY PROGRAM, BECAUSE OF THE CURRENT STATE OF THE NATIONAL ECONOMY, IS IT REASONABLE TO ASSUME THAT STATE AND LOCAL GOVERNMENTS CAN? I THINK NOT.

NCSL RECENTLY CONDUCTED A NATIONWIDE SURVEY OF LEGISLATIVE FISCAL OFFICERS IN AN EFFORT TO ASSESS THE FISCAL CONDITION OF THE STATES. WE FOUND THAT:

- O AT THE END OF THE CURRENT FISCAL YEAR, 19 STATES PROJECT DEFICITS IN THEIR GENERAL FUNDS AND ANOTHER 12 STATES ANTICIPATE HAVING A YEAR-END BALANCE OF 1% OR LESS OF THEIR ANNUAL GENERAL FUND SPENDING;
- O THIRTY-FIVE STATES HAVE REDUCED SPENDING FOR THE CURRENT FISCAL YEAR;

O ALL REGIONS OF THE COUNTRY HAVE BEEN AFFECTED BY FISCAL MISERIES. AT LEAST TWO STATES IN EACH OF THE NATION'S EIGHT REGIONS ANTICIPATE ENDING FISCAL YEAR 1983 WITH A DEFICIT UNLESS PRESENT POLICIES ARE CHANGED.

THE CURRENT NATIONAL ECONOMIC PICTURE OF SLOW ECONOMIC GROWTH AND HIGH UNEMPLOYMENT IS NOT CONDUCIVE TO HEALTHY STATE ECONOMIES, THEREFORE NCSL OF COURSE LOOKS FORWARD TO ECONOMIC RECOVERY AND SUPPORTS REDUCING THE FEDERAL DEFICIT. HOWEVER, NCSL DOES NOT SUPPORT THE SHIFTING OF COSTS AND RESPONSIBILITIES FROM THE FEDERAL GOVERNMENT TO STATE AND LOCAL GOVERNMENTS AS A MEANS TO THAT END.

NCSL HAS TAKEN NO POSITION ON THE DENIAL OF FEDERAL BENEFITS TO PERSONS LEGALIZED UNDER THE ACT, ALTHOUGH WE BELIEVE THAT IT WILL CREATE A GREATER DEMAND FOR STATE AND LOCAL ASSISTANCE. WE ARE CONCERNED ABOUT EFFORTS TO MINIMIZE THE POTENTIAL IMPACT OF THE LEGALIZATION PROGRAM ON STATE AND LOCAL GOVERNMENTS BY IMPLYING THAT BECAUSE MANY ILLEGAL ALIENS CURRENTLY RESIDING HERE ARE EMPLOYED AND CONTRIBUTING TO STATE AND LOCAL REVENUE BASES THAT STATE AND LOCAL ASSISTANCE SHOULD BE "OFFSET" IN SOME WAY TO ACCOUNT FOR THESE CONTRIBUTIONS. THE SAME WORKERS THAT CONTRIBUTE TO STATE AND LOCAL REVENUES, ALSO CONTRIBUTE TO THE FEDERAL INCOME TAX, HOWEVER THEY WILL BE INELIGIBLE FOR MOST FORMS OF FEDERAL ASSISTANCE. WHILE THE FEDERAL GOVERNMENT CAN CLEARLY DENY BENEFITS TO PERSONS LEGALIZED UNDER THE ACT, THERE IS SOME QUESTION AS TO WHETHER STATES, EVEN IF AUTHORIZED BY FEDERAL LEGISLATION, MAY TAKE SIMILAR ACTION. EVEN IF STATE AND LOCAL GOVERNMENTS MAY DENY ASSISTANCE TO PERSONS LEGALIZED UNDER THE ACT, IT IS UNLIKELY SUCH AN ACTION WOULD BE TAKEN. IT MUST BE RECOGNIZED

THAT THESE ARE FUTURE CITIZENS OF THE UNITED STATES, AND RESIDENTS OF OUR COMMUNITIES. WE CANNOT AFFORD TO DENY BASIC AND FUNDAMENTAL HUMANITARIAN CARE TO THESE PEOPLE, NOR CAN WE AFFORD TO PAY FOR THIS ASSISTANCE OUT OF OUR BUDGETS.

THE ADMINISTRATION HAS SUGGESTED THAT THE "EDWARD'S AMENDMENT" PROVIDES NO INCENTIVE FOR STATE AND LOCAL GOVERNMENTS TO CONTROL PROGRAM COSTS. THE REIMBURSEMENT PROVISION IN HR 1510 IS A TEMPORARY ONE. STATE AND LOCAL GOVERNMENTS WILL ULTIMATELY BE RESPONSIBLE FOR THE COST OF PROVIDING ASSISTANCE TO PERSONS LEGALIZED UNDER THE ACT, A FACT WHICH I BELIEVE PROVIDES GREAT INCENTIVE TO STATE AND LOCAL GOVERNMENTS TO CAREFULLY SCRUTINIZE PROGRAM USE. A CAREFULLY MONITORED PROGRAM WITH INSUFFICIENT FUNDS, HOWEVER, IS NOT CONDUCIVE TO THE DEVELOPMENT OF AN EQUITABLE OR HUMANITARIAN LEGALIZATION PROGRAM. NCSL IS NOT SEEKING REIMBURSEMENT AS A FINANCIAL WINDFALL. WE ARE SEEKING REASONABLE FINANCIAL ASSISTANCE TO ENABLE STATE AND LOCAL GOVERNMENTS TO PROVIDE A HUMANITARIAN ENVIRONMENT FOR PERSONS THAT ARE LIKELY TO BECOME FULL UNITED STATES CITIZENS.

THE ATTORNEY GENERAL CHARACTERIZED THE PORTION OF THE "EDWARD'S AMENDMENT" THAT PROVIDES FOR ASSISTANCE TO IMPACTED SCHOOL DISTRICTS AS "UNWARRANTED." THE CHILDREN AND YOUNG ADULTS WHO WOULD RECEIVE THIS ASSISTANCE ARE LIKELY TO BECOME FUTURE UNITED STATES CITIZENS. IF WE FAIL TO PROVIDE ADEQUATE EDUCATIONAL OPPORTUNITIES TO THEM, IT IS LIKELY THAT THEY WILL BECOME PERMANENTLY DEPENDENT ON FEDERAL, STATE AND/OR LOCAL ASSISTANCE. THE EDUCATION ASSISTANCE PROVISION IN HR 1510 DOES NOT PROVIDE FOR REIMBURSEMENT OF THE COST OF EDUCATING PERSONS LEGALIZED UNDER THE ACT.



NCSL ENVISIONS THIS PROGRAM AS ONE THAT WILL ASSIST THE STATES IN PROVIDING SPECIAL EDUCATIONAL INSTRUCTION AND SERVICES TO PERSONS LEGALIZED UNDER THE ACT. AS YOU KNOW, THE EDUCATION ASSISTANCE PROVISION IS SUBJECT TO APPROPRIATIONS AND IS CLEARLY INTENDED TO OFFSET THE EXTRAORDINARY COSTS ASSOCIATED WITH PROVIDING QUALITY EDUCATIONAL OPPORTUNITIES TO THESE FUTURE CITIZENS. NCSL COMMENDS THE COMMITTEE FOR INCLUDING SUCH A PROVISION AND WOULD URGE YOU TO RETAIN THIS IMPORTANT PROVISION DURING FUTURE DELIBERATIONS ON HR 1510.

FINALLY, THERE HAS BEEN LITTLE DISCUSSION OF HOW THE ACTUAL PROCESSING OF APPLICATIONS FOR LEGALIZATION WILL BE HANDLED. THIS IS A MATTER THAT CONCERNS US, AND ONE WHICH WE HOPE THAT YOU WILL BE WORKING CLOSELY WITH THE IMMIGRATION AND NATURALIZATION SERVICE (INS) ON. NCSL ENCOURAGES YOU TO REQUIRE THE INS TO WORK CLOSELY WITH GROUPS SUCH AS NCSL AS WELL AS WITH STATE AND LOCAL OFFICIALS IN THE DEVELOPMENT OF THIS PROCESSING SYSTEM. IF A LEGALIZATION PROGRAM IS ADOPTED, IT IS IMPERATIVE THAT STATE AND LOCAL GOVERNMENT OFFICIALS ARE KEPT INFORMED ON THIS MATTER.

IN CLOSING WE WOULD LIKE TO EMPHASIZE THAT NCSL BELIEVES THAT IMMIGRATION REFORM IS NECESSARY AND THAT ACTION SHOULD BE TAKEN. NCSL MUST BE INSISTENT ON THE REIMBURSEMENT PROVISION, HOWEVER, BECAUSE WE BELIEVE THAT IF THERE IS TO BE LEGALIZATION FULL REIMBURSEMENT FOR STATE AND LOCAL COSTS WITHIN THE LIMITATIONS OF THE "EDWARD'S AMENDMENT" IS AN INTEGRAL PART OF SUCH A PROGRAM.

ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES, WE THANK YOU FOR THIS OPPORTUNITY TO SHARE OUR VIEWS AND CONCERNS WITH YOU AND LOOK FORWARD TO WORKING WITH YOU DURING THE COMING MONTHS ON THIS AND OTHER AREAS OF MUTUAL CONCERN AND INTEREST. WE WOULD BE GLAD TO ANSWER ANY QUESTIONS YOU MAY HAVE.

Mr. MAZZOLI. Let me ask two questions. Mr. Dana, are you under the same time constraints your colleagues are?

Mr. DANA. No.

Mr. MAZZOLI. Would you gentlemen mind if we let them respond before your presentations?

The second thing I would like to say before I yield to my friend from Florida who has some time constraints, let me just suggest to you, Senator Roberti and Senator Hill, the State of California and the State of Florida are very well represented on this committee. Congressman Lungren is now a ranking member and has been zealous about representing the interests of California, as well as the Nation. Our new member, Larry Smith, and Bill McCollum have been, as all of us know who have followed the bill, ardent about the particular interests of Florida. So I think that you can carry it back to the respective assemblies of the State house, the fact that those two States are always thought of by the subcommittee, especially where there is a special need that is brought to our attention.

So with that I yield to my friend from Florida.

Mr. SMITH. Thank you, Mr. Chairman. I don't have any questions. A lot of the things that have been developed by NCSL on the end, the people on the panel over the years, are concerns I have worked with. I would just say, Senator Hill and Mr. Pingree are very valued members of the Florida government. Mr. Pingree has been a very valued member of the Government for quite a long time, and Senator Hill and I worked very closely on several issues in the legislature together. I just want to say, in general, that we understand the problems. The Attorney General was here, and I asked specific questions about the block grant program and the problem with the fact when the money runs out, and the people don't get the humanitarian needs, you're right there on the firing line. You're in the cities and counties and in the State. If you are going to provide the programs, provide the welfare, provide the medical care and the other things, you have to provide, and there is no reimbursement, there's going to come a point where you are going to have to start making harder decision than you ever wanted to make before.

We understand that, and there are those of us that do not agree with the approach the administration is taking. We want you to understand that.

I meant to make that observation to the other panel as well. It is not only from the end of the legislation that is important, but on the other end, if we pass it, and it's not enforced, if it's not funded, all of it is going to turn into an unfortunate morass. So I would suggest that there are those in this Congress at this moment, and plenty of us, I believe, who want to do what we can to aid not only in making the statutory requirements such that everybody can live with them and benefit, but also make sure the money is available to you who have to be able to fund this situation to make sure you have it, in order to perpetuate a solution to the problem rather than to add to the problem.

With that, I will take my leave, and I apologize.

Mr. MAZZOLI. Thank you very much, Congressman, and I yield to my friend from California, Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman.

Thank you, both Senator Roberti and Senator Hill, for being here. I have a particular question for Senator Hill based on one of the statements he made. I hope you will respond as well. You talk about the fact that the Federal Government in both our bill and the Senate bill have said, those who are involved in the legalization program will be for an appointed time disabled from receiving Federal benefits, and you then state your concern that these benefits will have to be carried for that time by State and local governments.

You do make passing reference to the fact that in the House bill it has my amendment, which allows the State and the local government to do the same, based on a reading of Supreme Court cases, which you have said that States can't do this, because that is within the jurisdiction of the Federal Government, but leaving the clear impression, if the Federal Government grants you that authority that you could do it.

We all know that the Supreme Court being the way it is, that they could change their mind when presented with that question, but then you go on to say, even if State and local governments may deny assistance to persons legalized under the act, it's unlikely such an action would be taken. It must be recognized as future citizens of the United States, et cetera, et cetera.

Let me just give you some of the thinking that went into that, and then ask you to respond. We are trying to build a consensus for legalization. I firmly believe that's the only way you can do it. You can't round up a large number of people and send them home, particularly when they're attracted here by a de facto border. We said there wasn't one, but we have relied on foreign labor for at least 100 years. That being the case, however, we also wanted to make sure in any legalization program—and I use that word advisedly; it doesn't mean when you get your toe across the border you're here and everything is OK.

We wanted to construct a legalization program which was, by its design, not an additional attraction for others to come across the border, as soon as this program gets into effect, waiting the next legalization program. If we take for an assumption, which I believe—that most of them come here to work, the thought was that we would not produce an additional attraction, that is, of welfare acceptance and dependence, legally, and that we would try to follow a precept in the law, which says that if you're to come here as a permanent resident alien under normal circumstances through the regular route, you are not to be a public charge, that is, you have responsibility, you're not supposed to be a public charge.

So taking into account all of those things, we tried to construct a piece of legislation which said, (a) the Federal Government will deny benefits, except of an emergency medical nature or public health nature, and (b) the local and State governments would do the same, because we are convinced most of these people are working, and we did not want to make exceptions for those individuals who are only coming here to seek welfare, as small as that group may be—and I think it is a small group—because that, in effect, is a slap in the face of those millions of people around the world who



have been waiting through the legal procedures to come through with their proper numbers.

That's not just people from the Philippines or people from Europe, many hundreds of thousands of people from Mexico and other places in Central and South America.

So, with that in mind, could you comment a little further on your statement that you don't think State and local government would take action?

Senator HILL. Well, the situation that I can speak to, perhaps in Florida more specifically, Congressman, but the problem has been, coming back to the same thing, money. Certainly, there have been humanitarian considerations that had to be given as well. Florida, at the present time, while it has been a donor State for so many years, we are coming up with our first revenue shortfall expectations at the present time. I don't think that the statement is putting it out of context. The way it sounds, it can be, perhaps quite that way, but I really find it most difficult with us in the situation we are having now, in trying to raise money.

We have a number of problems. We have an increase in population projected through the 1980's to somewhere around 12 million people in the State of Florida by 1990, and between 14 and 16 million by the year 2000. This is without immigration. This is just an influx of primarily, I guess, retirees, people from this country moving to Florida for better climate, which brings up another problem. 17.3 percent of our population in the State of Florida is retirees. If you use the Federal median of 15.3 percent, the national average, we've got somewhere around 258,000 senior citizens in our State, really, that are impoverished, actually on pensions. They cannot afford the tax base necessary to provide all the revenue needed.

Mr. LUNGREN. I understand that. Maybe I didn't direct my question very specifically. My question was, do you think there is something wrong with disabling? That is, saying these people who come to the legalization program cannot receive welfare, basic assistance and medical assistance, other than that of an emergency nature or public nature, which we suggest can be done on the Federal level and give you authority on the State and local level?

Senator HILL. No; I would not think so.

Senator ROBERTI. I guess, to my mind, it would depend on the problem. Last year we had a program in which the Southern California illegal refugee population could qualify immediately on a type of unemployment insurance that was unique to the State, and we found only either refugees or illegals were qualified, so we abolished that, and I thought that was the proper thing to do.

In the health area, it really depends on what or how we would define an emergency health service, and I would say, basically in my own mind, most health services should be made available to people who are in our country, and that's probably where I draw the line in my own mind. I would say other kinds of welfare assistance should be restricted, and I see no problem with the hiatus. In fact, we have been operating on that basis in California.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from Florida.



Mr. McCOLLUM. While I haven't had the pleasure to serve in the State legislature with Senator Hill, I am happy to have him here, and I do admire his work and appreciate his testimony today, being a fellow Floridian and a fellow legislator in this case.

I have a couple of questions and, like Congressman Smith, I may not be able to stay throughout.

What I am going to ask, Senator Hill, I would hope that Mr. Pingree, when he gets to answer questions, might be able to respond to these questions as well.

You commented on the prohibition in this bill, the idea to stopping the flow of folks coming in here is fully operational in our new bill, before we get to the legalization. I think I read into what you are saying, you do not want to see legalization maybe at all.

I personally don't favor it, but at the very least, if we did it, and time takes effect in this bill for—employer sanctions and other provisions of law enforcement, and so on—that, in fact, will illustrate we're stopping the flow of folks coming in and are not creating any magnet effect, and so forth.

That partly embodied my concerns with the idea of using a registry date, which I don't know if you're familiar with, Senator, but in the bill now pending before us, we have a sort of a legalization that, under an old provision of a law back in 1948 said, if you were here on a certain date, you would be allowed to stay here, providing you met some certain requirements. This is subject to Approval by the Attorney General.

We are moving the registry date up to 1973, unrelated to the legalization or amnesty, and my personal views have been, for some time, that that is sufficient, but I find it an intriguing idea, which I think I heard in your testimony, and I know I have seen in Mr. Pingree's coming up, that perhaps we could build into this legislation—into the legalization legislation—a trigger mechanism for legalization down the road after other factors have been built in.

Did you yourself indicate that in your testimony?

Senator HILL. Well, I agree with the Congressman from California a moment ago. The thing that I think is of primary concern is the fact that if this is not done and handled in such a manner that we would not encourage a large influx of aliens at a later time. I come back to the bill and the idea of what Representative Smith was saying earlier, that we can't love the bill to death to make it perfect. I understand that.

I think something essentially outside the bill must be done, giving an assurance that once this becomes world knowledge, that now there have been people that have come here illegally, have managed to avoid the law, in our country, now, they are going to be given status here. I think that is going to be encourage others throughout the world that want to come to the United States very badly to take the same risks. They did it once, and they will do it again, and the only thing I would feel would be a deterrent to that would be the idea we can really secure our borders to such an extent that we would certainly greatly reduce the numbers that are coming across.

Mr. McCOLLUM. I agree very much with that, and later on when I am not here Mr. Pingree can elaborate on that in his testimony.

I have one question for both senators, and then I am going to yield back my time. It has to do with the area of block grants, primarily concerned with state level funds. I have been on this committee for a long time and have been a very strong advocate of reimbursement to the States. The suggestion has been made that there may be some room for compromise with the administration in this battle over reimbursement and block grants.

First, is what we have in our bill now or maybe what Mr. Edwards proposed last time. Second, is the idea is that maybe the states will accept, not willingly but accept some matching fund concept, whereby perhaps the Federal Government contributed 80 percent and the States contributed 20 percent. That's not a figure that has been given to us. I am just throwing that figure out as an example.

Would that in any way be something that the legislature in Florida or California would consider as a viable alternative, if we reached some compromise?

Then later I'd like Mr. Pingree, when he gets his chance, to comment on this.

Senator HILL. If I remember correctly—and Senator Roberti can correct me if I am wrong—but it seems to me the position of the NCSL is not the block grant type. Florida is somewhat accustomed to matching grants, by the very action we have taken with our Department of Transportation in the building of roads in those areas. But I think they would perhaps—and I really can't speak for the legislature—prefer that.

It's my own personal opinion, I think the matching grant. The idea of block grants, where it just is so much money and it's that, when it runs out, it's tough. Sometimes it's not taken into consideration—all the facts involved—and it's really not sufficient to cover the entire program.

Mr. McCOLLUM. Thank you.

Senator ROBERTI. Well, I have my preference. I would prefer full reimbursement. Now you're talking about block grants or matching grant based on some 80/20 formula. I would tend to agree with Senator Hill. Our experience with block grants has not been a happy one, and hence, if I have my own preference, speaking only for myself—not for the State legislature or the NCSL—I would say I prefer a matching formula, even though in terms of real dollars the upfront formula amounts to the same amount of money.

We just would sense we would be more comfortable with that. All that said and done, we favor full reimbursement.

Mr. McCOLLUM. Well, I do too. I just wanted to inquire.

Thank you, Mr. Chairman. I know my time has expired.

Mr. MAZZOLI. Thank you. Let me yield myself 5 minutes. I have just a couple of questions.

We'll probably battle this thing out about block grant versus 100 percent reimbursement for a while. I hope I can find some answers. But let me ask you this question, Senator, and you also, Senator. I don't find it too difficult to understand why you want to be reimbursed for the costs which might occur by reason of legalization, and since, if we are wrong, that these people are hard workers and probably won't become a burden—but if we are wrong, why should



we provide reimbursement or assistance for those costs that might be borne without any connection to their legal status?

For example, the Supreme Court has said that Texas must educate the children of people here without documents. Now the amendment, as I understand it, also includes an educational component. Now, do you think that that is something that the Federal Government ought to pay, or is it something the State should pay for?

Senator ROBERTI. I would think it is something that the Federal Government should pay for, pursuant to the Supreme Court decision, which I grant, the Congress has no direct control over. However, the whole fact of the presence of the immigrants is in response to not necessarily the Federal policy but our relationship with other nations, and I would say it's far more a Federal problem than ours, at least over the immediate first few years.

Mr. MAZZOLI. Will the Senator yield? Do you see a difference between our reimbursement for the cost attendant upon these people who become legal residents of the country and costs which you now should bear because of what the court says you should do for people, regardless of whether or not they're here illegally?

Senator ROBERTI. Mr. Chairman, if I understand your question correctly, my feeling would be that if someone most recently came here, I feel, number one, the Federal Government is responsible for that. While the Federal Government is responsible for the fact that we have these aliens here and residents in the country for a long period of time, nevertheless, I think we would be correct in saying that they have paid taxes and contributed to the community. I think you are correct in that instance. I would not feel that the Federal Government should have to pay for the education of the children if the people have been active in producing within the community itself.

Mr. MAZZOLI. I guess, Senator Roberti, the point is, the fact they're here at all shows is a breakdown of Federal policy, which means that even though the Court says you have to pay to educate the children, it's still a Federal responsibility. You think the Edwards amendment isn't too broad, because they wouldn't even be here in the first place, if the Federal Government policy worked.

Senator ROBERTI. The Government says the Border Patrol will patrol the border, and it is the responsibility of the Federal Government. There is absolutely nothing the State can do in this area.

Mr. MAZZOLI. OK, let me ask you this. What would be the difference then? What happens if relatives of people who are now California citizens of the United States and residents in California have their relatives come in through the immigration laws? Do you think the Federal Government has any responsibility to reimburse States for any costs attendant to the care or assistance extended to permanent residents coming in via the preference system?

Senator ROBERTI. If the permanent resident called for the nonresident, and this was directly—and, in fact, the permanent resident was in charge of the nonresident, I would suspect that, yes, you do have the responsibility, but it is mitigated.

Mr. MAZZOLI. Don't get me wrong. In other words, a U.S. citizen living in Los Angeles petitions through the immigration laws for family members, and through the immigration laws the family

members come in as permanent residents, but those family members immediately go on welfare, despite the public charge. They immediately proffer themselves to the California system of higher education, and so forth.

Do you think, carrying this idea of reimbursement a step further, do you think the Government owes California any help, or Florida, for costs attendant to immigrants who come?

Senator ROBERTI. I would say some rough rule of thumb, yes, some national average. California provides certain kinds of assistance that are unique, and in a way particular to our State and not to any other State. That's one thing which I don't think the Federal Government necessarily has to be obligated on, but some base amounts of money in an area such as that, yes, I would say would be a responsibility.

Mr. MAZZOLI. You won't have to be reimbursed, for instance, if the person comes in and goes to Los Angeles and goes on welfare. You don't get reimbursed, except there is a federal participation in some welfare costs.

Senator ROBERTI. That's become much less so.

Mr. MAZZOLI. Senator Hill, how do you see that? Do we owe any assistance to Florida for costs it bears because of people who come through the immigration system?

Senator HILL. Mr. Chairman, I was thinking perhaps in terms of extraordinary costs, and while I made my remarks, I wasn't thinking of everyday school costs, in that respect.

Mr. MAZZOLI. Because you're not now reimbursed for those, and the National Association of State Legislatures doesn't have any plan for asking us to do something like that.

Senator HILL. In the education system in Dade County, for the bilingual Latin children that come in, is in debt a considerable amount of money. This has been the case over years. I think we would deserve something. I've tried to be fair also to the Federal Government. I don't think the Federal Government should pick up everything, or if there is an area where its really not justified. Basically, though, the opinion is, you know, the Federal Government is the one responsible. Again, as Senator Roberti said, for the borders, and realize again, if you're looking at it realistically, how in God's name are we going to protect the thousands of miles of border that we have?

Mr. MAZZOLI. Let me ask this other question, and you can answer it first, Senator, since the mike is there.

Do you believe that there will be a tendency on the part of people once they are legalized to seek assistance, or do you believe, as many argue, because these people are workers, they are not really going to be present in the welfare system of the States to the extent that the regular U.S. population is? How do you see that?

Senator HILL. Mr. Chairman, I think we are living in a time when there is a lot of public sentiment for the Government to take care of you from cradle to grave, and the fact that someone else is getting that benefit and they are not getting the benefit, you should get it also. I think this is one of the problems that we have in our society today—a basic problem. I can't really say whether these people will be more prone to run out and to start taking whatever Government contribution they could get, but I just find I



will have to try to answer that in a general vein, and I think the work ethic has suffered greatly in the years I have been here—52 years. But we just seem to find that as a problem.

Our communities are segmented, and that's something else. That's a problem. I don't know how exactly that would fit in.

Mr. MAZZOLI. So you feel that generally, while there is no way to look at the future, the States, just as a matter of prudence, ought to seek some assistance in the event the people become welfare recipients.

Senator Roberti, how do you see that?

Senator ROBERTI. I would say that, realistically, it's more difficult for an illegal to get onto the welfare system at any point. The fact of the matter is, human nature being what it is, there is really no difference between an illegal who seeks to be on the welfare system and someone else, and to the extent they may be able to do so, the motivation would be there, just the same. It's just more difficult.

Mr. MAZZOLI. So you think if you take away the difficulty, the motivation will then take over?

Senator ROBERTI. I think, realistically, there would be no reason to segregate two types of population and say there would be a different motivation.

Mr. MAZZOLI. My time has expired. I know the gentlemen have a time problem. You have been very helpful, Senator Hill and Senator Roberti. Thank you very much.

Let me now recognize for 5 minutes, Mr. Deane Dana of the Los Angeles County Board of Supervisors, who has been active in the subject for a long time.

Mr. Dana, you are recognized for 5 minutes, and we will go around the panel and come back with questions.

Mr. DANA. Mr. Chairman, members of the subcommittee.

I am Deane Dana, supervisor of Los Angeles County.

I would like to thank you for this opportunity to discuss with you the unanimous position of the Los Angeles County Board of Supervisors on the proposed Immigration Reform and Control Act of 1983, H.R. 1510.

As a county with 900,000 illegal aliens, some 20 percent of the undocumented population in this country, the board of supervisors has an active and urgent interest in passage of immigration reform.

The board recognizes that the Immigration Reform and Control Act of 1983 represents a desperately needed control over our borders and a unique opportunity to help those who have sought refuge within those borders.

In flying out to Washington last night, I was with Al Rizzo, the regional INS Western Region Director. He gave me some of the figures we're faced with.

Last year, apprehensions were some 20,000 to 25,000 every month in the Chula Vista sector, which is the San Diego area. The smugglers were about 160—in that general range.

Starting in the month of January, there were 39,199, and 388 smugglers were apprehended.

In February, it was over 40,000.

Based upon the middle of March, we are running at the 50,000 rate.

This is absolutely astounding.

I spoke a moment ago of opportunities provided by immigration reform. Obviously, a strengthening of the border patrol is not only an opportunity, but a necessity. So, too, are the proposed sanctions against employers who knowingly hire future undocumented workers.

Unless access to jobs is stiffly denied to future undocumented aliens, immigration reform will not succeed.

However, it is within the amnesty phase of the legislation that perhaps the opportunity with the greatest potential to alien and citizen alike resides—namely, medical screening.

It has been brought to my attention that a mini-amnesty program now underway in the Virgin Islands requires all newly arriving immigrants and the newly legalized aliens to secure a medical examination, an X-ray, and a blood test.

I assume the same rules will apply under the proposed legislation.

The alien, not the Government, pays for these services. The costs range from \$65 to \$90 each.

What we have here, in short, is a once-in-a-lifetime opportunity for a health screening of 1 to 3 million aliens, at their expense. And while these aliens are with a physician, let's see that they receive polio vaccine, diphtheria, and tetanus shots and, where appropriate, measles, mumps, and rubella shots.

The current set of medical requirements meets the provisions of the law—along lines established half a century ago—but do not do much good for the individuals concerned.

May I, Mr. Chairman, respectfully suggest that your staff contact the Public Health Service on this expanded medical screening opportunity.

As with any opportunity, there are problems to be faced and resolved. Reimbursement to local governments impacted by Immigration Reform is a key problem. That is why Los Angeles County favors H.R. 1510's reimbursement language over S. 529's block-grant language.

Legalization will have a direct increased cost impact on local governments, especially counties with general assistance programs, well beyond any financial contribution made by undocumented workers.

The Senate's block grant formula has major flaws, and we would not support that.

I agree with everything Senator Roberti said in connection with this.

The potential for 100-percent reimbursement, subject to available appropriations, as contained in the House version of the legislation, is an essential protection for local governments.

In Los Angeles County, we are faced with a potential budget shortfall of approximately \$93.6 million in the fiscal year beginning July 1, 1983.

We already know that in the second year of legalization our general assistance costs would increase by \$32 million, and would rise by \$108 million during the first 3 years. The legislation will add \$20 million each year to the \$80 million in unreimbursed health services to currently undocumented workers.

This \$80 million is all from local property tax funds.

The Supreme Court has ruled specifically on this, that we have to provide this service. It is currently our yearly budget shortfall that we struggle with.

To put it as straightforwardly as possible, David North's projections indicate Los Angeles County will go broke within 3 years if there is no reimbursement for costs incurred in implementing this bill. This is why Los Angeles County cannot support a bill that does not provide for reimbursement.

Taxes paid by current illegal aliens are largely to social security and income taxes. These funds go to Washington and Sacramento, not the counties.

I know there is a belief that Los Angeles County receives substantial taxes and revenue sharing because illegal aliens are present. However, the current revenue sharing is \$76 million a year.

The Census Bureau is about to announce that the illegal population nationwide is 2 million. If even 1 out of every 5 of those who were counted—400,000—were in Los Angeles County, that would account for no more than \$5 million in revenue sharing funds.

We also have one other item. We need to disqualify the newly legalized from receiving general assistance during their waiting period. I would urge you to support language that would mandate the following stamp on the identification cards of the newly legalized:

"Authorized to work, but not authorized to receive cash assistance and subject to deportation if such assistance is received."

We do support unemployment insurance benefits for newly documented persons.

We feel comprehensive health care should be provided to the H<sup>2</sup> temporary worker program.

But, basically, we back your bill and we think it's absolutely imperative.

[The complete statement follows:]

STATEMENT  
OF  
DEANE DANA  
BOARD OF SUPERVISORS  
LOS ANGELES COUNTY

BEFORE THE  
HOUSE JUDICIARY SUBCOMMITTEE ON  
IMMIGRATION, REFUGEES AND  
INTERNATIONAL LAW

WASHINGTON, D.C.

MARCH 16, 1983



Chairman Mazzoli, Honorable Members of the House Judiciary Subcommittee on Immigration, Refugees and International Law, I am Supervisor Deane Dana of Los Angeles County. I would like to thank you for this opportunity to discuss with you the position of the Los Angeles County Board of Supervisors on the proposed Immigration Reform and Control Act of 1983, H.R. 1510.

As a County with 900,000 illegal aliens, some 20 percent of the undocumented population in this country, the Board of Supervisors has an active and urgent interest in passage of Immigration Reform. The Board recognizes that the Immigration Reform and Control Act of 1983 represents a desperately needed control over our borders, and a unique opportunity to help those who have sought refuge within those borders.

The need for stronger border control was dramatically illustrated during the first 16 days of this past January, a period when 18,900 aliens were arrested attempting to enter the country illegally in the Chula Vista Sector in Southern California. That was a 72 percent increase over the same period, and points to a million arrest total for this year, the first time in 29 years arrests will have been that high.

But I spoke a moment ago of opportunities provided by Immigration Reform. Obviously, a strengthening of the Border Patrol is not only an opportunity, but a necessity. So, too, are the proposed sanctions against employers who knowingly hire future undocumented workers. Unless access to jobs is stiffly denied to future undocumented aliens Immigration Reform will not succeed.

However, it is within the amnesty phase of the legislation

that perhaps the opportunity with the greatest potential to alien and citizen alike resides-- namely, medical screening. It has been brought to my attention that a mini-amnesty program now under way in the Virgin Islands requires all arriving immigrants and the newly-legalized aliens to secure a medical examination, an X-ray, and a blood test. I assume the same rules will apply under the proposed legalization. And the alien, not the government, pays for these services. The costs range from \$65 to \$90 each.

What we have here, in short, is a once-in-a-lifetime opportunity for a health screening of one to three million aliens, at their expense. And while these aliens are with a physician, let's see that they receive polio vaccine, diphtheria and tetanus shots, and where appropriate, measles, mumps and rubella shots.

We almost have measles conquered, but as the recent outbreak in Indiana demonstrates, there are still many vulnerable people. No child is allowed in any public school in the country without these shots-- the same requirement is needed of the newly legalized.

The current set of medical requirements meets the provisions of the law-- along lines established half a century ago-- but do not do much good for the individuals concerned.

Mr. Chairman, may I respectfully suggest that your staff contact the Public Health Service on this expanded medical screening opportunity.

As with any opportunity, there are problems to be faced and resolved. Reimbursement to local governments impacted by

Immigration Reform is a key problem. That is why Los Angeles County favors H.R. 1510's reimbursement language over S 529's block grant language.

Legalization will have a direct increased cost impact on local governments, especially counties with general assistance programs, well beyond any financial contribution made by undocumented workers. The Senate's block grant formula has two major flaws:

The actual health and welfare expenditures incurred by a state may not correspond to the number of legalized aliens within it. Just as with the general population, the welfare dependancy rates of legalized aliens are likely to vary significantly between states. Instead of allocating federal funds on the basis of the number of legalized aliens, a more equitable approach would directly tie the level of federal aid to actual costs, as in the House bill.

The second flaw results from interpreting "net expenditures" to mean that state and local taxes paid by legalized aliens would be deducted from welfare and health care expenditures in allocating federal funds to states and localities. This concept ignores the fact legalized aliens make use of many other state and local services, in addition to health and welfare.

I might add, it would be impossible to accurately estimate the amount of local taxes paid by legalized aliens.

The potential for 100 percent reimbursement, subject to available appropriations, as contained in the House version of the legislation, is an essential protection for local governments. To illustrate, Los Angeles County faces a potential budget shortfall of approximately \$93.6 million in the fiscal year beginning July 1, 1983.

We already know that in the second year of legalization our general assistance costs would increase by \$32 million, and would rise by \$108 million during the first three years. The legislation will add \$20 million each year to the \$80 million in unreimbursed health services to currently undocumented workers.

To put it as straightforwardly as possible, David North's projections indicate Los Angeles County will go broke within three years, if there is no reimbursement for costs incurred in implementing this bill. That is why Los Angeles County cannot support a bill that does not provide for reimbursement.

Taxes paid by current illegal aliens are largely to Social Security and income taxes. These funds go to Washington and Sacramento, not to the counties. I know there is a belief that Los Angeles County receives substantial taxes and revenue sharing because illegal aliens are present. However, the current revenue sharing level is \$76 million a year. The Census Bureau is about to announce that the illegal population nationwide is two million. If even one out of every five of those who were counted.... 400,000.... were in Los Angeles County, that would account for no more than \$5 million in revenue sharing funds.

While reimbursement is critical, federal relief is also need



ed to disqualify the newly legalized from receiving general assistance during their waiting period. I would respectfully urge the Chairman and Honorable Members of this Subcommittee to support language that would mandate the following stamp on the identification cards of the newly-legalized:

"Authorized to work, but not authorized to receive case assistance and subject to deportation if such assistance is received."

The Los Angeles County Board of Supervisors has unanimously voted to seek clarifying language in the Immigration Act that assures access to eligibility to Unemployment Insurance benefits for newly documented persons.

Further, the Board supports an additional amendment requiring employer-provided comprehensive health care coverage for all workers entering the county under the H-2 Temporary Worker program.

Let me close by also urging you to create regional commissions to advise the Attorney General and the Commissioner of the U.S. Immigration and Naturalization Service on the impact and implementation of this legislation.

First-hand observation in high-impact areas by these regional commissions can speed detection of flaws, and equally hasten suggested solutions.

In summary, the Board of Supervisors believes the Immigration Reform and Control Act of 1983 embodies long-needed changes, and represents a major, positive movement toward an effective national immigration policy. Thank you for this opportunity to discuss this key issue.

Mr. MAZZOLI. Thank you very much, Mr. Dana. I appreciate your condensing your remarks on a subject this broad, but it gives us a chance then to give you some questions.

Mr. David Pingree is recognized for 5 minutes.

Mr. PINGREE. Mr. Chairman, members of the committee, thank you for the opportunity to be here today to present testimony on behalf of Governor Bob Graham and the National Governors' Association.

Repeatedly, the Governors of this Nation have proclaimed the critical need for this country to regain and maintain control of its borders. To do this, immigration reform is crucial.

The Governors are grateful for the tireless efforts of this subcommittee on behalf of a strong and just immigration statute. Furthermore, they are fully committed to assisting you in overhauling and transforming this country's immigration system and processes.

While there are numerous issues that relate to immigration reform, I will comment briefly on the following concerns: Legalization, employer sanctions, the asylum and exclusion process, legal immigration reform, and presidential emergency power.

Although the National Governors' Association has not adopted a formal, definitive position on legalization, the Governors have expressed two grave reservations about the consequences of such a program.

Legalizing the status of illegal aliens could make a huge number of people—perhaps several million—eligible for assistance they could not claim under their former illegal status.

While the House bill would allow State and local governments to make legalized aliens ineligible for cash and medical assistance, that very same provision raises two fundamental questions:

First, would such an exclusion stand the test of constitutional challenge?

Second, who, in fact, would bear the responsibility for providing necessary assistance?

State and local governments cannot—and should not, as Senators Roberti and Hill said—be asked to take the risks associated with such unanswered questions. It is the Federal Government's obligation to accept responsibility for all costs related to any services needed by legalized aliens.

We can and do support the current House language, however. Anything less than that is clearly unacceptable.

Another concern of the National Governors' Association is that the flow of illegal aliens into the United States after legalization would continue unabated, and the potential for ongoing illegal immigration will not diminish until there is in place an effective, workable, and enforceable national immigration law and policy.

The Governors maintain that legalization should be considered only after the U.S. Attorney General—or perhaps, even better, an independent arm of Congress, such as the General Accounting Office—certifies to Congress that new measures to stop illegal immigration are, in fact, working and being enforced.

In essence, the Governors want some assurance that the Immigration Reform Act, once enacted, is fully operational before the legalization section of the law would be triggered.

As you know, Mr. Chairman, Florida and Governor Graham were not in favor of legalization last year. We were adamant in that opposition.

We have attempted to find a position that allows us to support legalization and this bill fully. That is why we have come down in support of a triggering mechanism.

I think Congressman Mica from Florida has also indicated that a triggering mechanism would allow him to shift his position.

The Governor has contacted every member of the Florida congressional delegation, asking for this shift in position.

Employer sanctions are also an issue of concern. The Governors believe that one of the most effective means for controlling illegal immigration is to reduce the economic incentive of jobs luring illegal immigrants across our borders.

The incentive can be eliminated by prohibiting employment of illegal aliens. However, the enforcement mechanisms should not shift undue administrative burdens to employers. Further, the system must include safeguards to prevent discrimination against hiring minority workers because of unwarranted suspicion.

The National Governors' Association sees a critical need to provide a fair and expeditious review of asylum cases. Estimates indicate that there currently is a backlog of more than 140,000 people awaiting asylum proceedings, and this does not include the thousands of Cuban and Haitian entrants. Clearly, the existing system is woefully inadequate.

Concerning legal immigration, the National Governors' Association recognizes this country's responsibility to continue accepting immigrants at a generous level. But the Governors also recognize that our Nation no longer has unlimited frontiers or unceasing public resources.

Therefore, the Governors support control of legal immigration at a level consistent with our national interest under a ceiling adjusted periodically as conditions warrant.

My final point this afternoon addresses the issue of presidential emergency authority.

The National Governors' Association supports the proposal to provide the President with necessary emergency authority to act quickly and decisively in the face of an unexpected mass immigration of people seeking asylum in this country.

Governor Graham, in addition, feels that the issue of emergency authority is interrelated to the matter of contingency planning. Florida is a state that knows all too well the consequences of not having a detailed contingency plan when faced by an unprecedented mass immigration.

Therefore, the Governor feels that comprehensive review of any contingency plan by representatives of state and local governments is essential.

I would say that, unfortunately, although we have had numerous meetings with officials in the Administration on the matter, we do not yet have a signed-off, approved contingency plan. We have not had the meetings that were promised relative to a contingency plan. Our fear is that, from the point of view of State and local governments, if there were a mass influx today, we would not be in much better shape than we were in 1980.

On behalf of the National Governors' Association, Governor Graham, and myself, I thank you for the opportunity to be here today.

[The complete statement follows:]





National Governors' Association

Scott M. Matheson  
Governor of Utah  
Chairman

Raymond C. Scheppach  
Executive Director

TESTIMONY PREPARED FOR THE  
HOUSE SUBCOMMITTEE ON IMMIGRATION  
REFUGEE, AND INTERNATIONAL LAW

WASHINGTON, D.C., MARCH 16, 1983

GOVERNOR BOB GRAHAM, CHAIRMAN  
NATIONAL GOVERNORS' ASSOCIATION TASK FORCE  
ON IMMIGRATION AND REFUGEE ISSUES

DELIVERED BY  
DAVID H. PINGREE, SECRETARY  
FLORIDA DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. THANK YOU FOR THE OPPORTUNITY TO BE HERE TODAY TO PRESENT TESTIMONY ON BEHALF OF GOVERNOR GRAHAM AND THE NATIONAL GOVERNORS' ASSOCIATION.

REPEATEDLY, THE GOVERNORS OF THIS NATION HAVE PROCLAIMED THE CRITICAL NEED FOR THIS COUNTRY TO REGAIN AND MAINTAIN CONTROL OF ITS BORDERS. TO DO THIS, IMMIGRATION REFORM IS CRUCIAL. THE GOVERNORS ARE GRATEFUL FOR THE TIRELESS EFFORTS OF THIS SUBCOMMITTEE ON BEHALF OF A STRONG AND JUST IMMIGRATION STATUTE. FURTHERMORE, THEY ARE FULLY COMMITTED TO ASSISTING YOU IN OVERHAULING AND TRANSFORMING THIS COUNTRY'S IMMIGRATION SYSTEM AND PROCESSES.

WHILE THERE ARE NUMEROUS ISSUES THAT RELATE TO IMMIGRATION REFORM, THIS AFTERNOON, I WILL COMMENT BRIEFLY ON FOLLOWING CONCERNS: LEGALIZATION, EMPLOYER SANCTIONS, THE ASYLUM AND EXCLUSION PROCESS, LEGAL IMMIGRATION REFORM, AND PRESIDENTIAL EMERGENCY POWER. ALTHOUGH THE NATIONAL GOVERNORS' ASSOCIATION HAS NOT ADOPTED A FORMAL, DEFINITIVE POSITION ON LEGALIZATION, THE GOVERNORS HAVE EXPRESSED TWO GRAVE RESERVATIONS ABOUT THE CONSEQUENCES OF SUCH A PROGRAM.

LEGALIZING THE STATUS OF ILLEGAL ALIENS COULD MAKE A HUGE NUMBER OF PEOPLE--PERHAPS SEVERAL MILLION--ELIGIBLE FOR ASSISTANCE THEY COULD NOT CLAIM UNDER THEIR FORMER ILLEGAL STATUS.

WHILE THE HOUSE BILL WOULD ALLOW STATE AND LOCAL GOVERNMENTS TO MAKE LEGALIZED ALIENS INELIGIBLE FOR CASH AND MEDICAL ASSISTANCE, THAT VERY SAME PROVISION RAISES TWO FUNDAMENTAL QUESTIONS: FIRST, WOULD SUCH AN EXCLUSION STAND THE TEST OF CONSTITUTIONAL CHALLENGE? SECOND, WHO, IN FACT, WOULD BEAR THE RESPONSIBILITY FOR PROVIDING NECESSARY ASSISTANCE?

STATE AND LOCAL GOVERNMENTS CANNOT--AND SHOULD NOT--BE ASKED TO TAKE THE RISKS ASSOCIATED WITH SUCH UNANSWERED QUESTIONS. IT IS THE FEDERAL GOVERNMENT'S OBLIGATION TO ACCEPT RESPONSIBILITY FOR ALL COSTS RELATED TO ANY SERVICES NEEDED BY LEGALIZED ALIENS.

THE HOUSE BILL DOES AUTHORIZE THE PAYMENT OF STATE AND LOCAL COSTS ASSOCIATED WITH LEGALIZATION. HOWEVER, THE GOVERNORS PREFERRED THE LANGUAGE IN REPRESENTATIVE EDWARDS' ORIGINAL AMENDMENT, WHICH WOULD MAKE STATE AND LOCAL GOVERNMENT REIMBURSEMENT AN ENTITLEMENT. NONTHELESS, WE CAN AND DO SUPPORT THE CURRENT HOUSE

LANGUAGE, BUT ANYTHING LESS THAN THAT IS CLEARLY UNACCEPTABLE.

THE FEDERAL GOVERNMENT SHOULD NOT--IT MUST NOT--ABDICATE ITS RESPONSIBILITY FOR TOTALLY FUNDING SERVICES EXTENDED TO LEGALIZED ALIENS. OTHERWISE STATE AND LOCAL GOVERNMENTS WOULD HAVE TO BEAR THE BRUNT OF INORDINATE COSTS RESULTING FROM LEGALIZATION--A BURDEN FOR WHICH THEY HAVE NO LEGAL RESPONSIBILITY OR OBLIGATION.

ANOTHER CONCERN OF THE NATIONAL GOVERNORS' ASSOCIATION IS THAT THE FLOW OF ILLEGAL ALIENS INTO THE U.S. AFTER LEGALIZATION WOULD CONTINUE UNABATED, PERHAPS EVEN INCREASE. THE POTENTIAL FOR ONGOING ILLEGAL IMMIGRATION WILL NOT DIMINISH UNTIL THERE IS IN PLACE AN EFFECTIVE, WORKABLE AND ENFORCEABLE NATIONAL IMMIGRATION LAW AND POLICY.

THE GOVERNORS MAINTAIN THAT LEGALIZATION SHOULD BE CONSIDERED ONLY AFTER THE U.S. ATTORNEY GENERAL--OR PERHAPS EVEN BETTER, THE GENERAL ACCOUNTING OFFICE--CERTIFIES TO CONGRESS THAT NEW MEASURES TO STOP ILLEGAL IMMIGRATION ARE, IN FACT, WORKING AND BEING ENFORCED. IN ESSENCE, THE GOVERNORS WANT SOME ASSURANCE



THAT THE IMMIGRATION REFORM ACT, ONCE ENACTED, IS FULLY OPERATIONAL BEFORE THE LEGALIZATION SECTION OF THE LAW WOULD BE TRIGGERED.

THE GOVERNORS DO NOT WANT THE UNITED STATES TO CONTINUE SENDING SIGNALS TO THE PEOPLE OF THE CARIBBEAN, CENTRAL AMERICA AND OTHER PARTS OF THE WORLD THAT IF ONLY THEY CAN REACH OUR SHORES, THEY WILL BE PERMITTED TO STAY, EVENTUALLY GRANTED LEGAL STATUS, AND ULTIMATELY MADE CITIZENS.

EMPLOYER SANCTIONS ARE ALSO AN ISSUE OF CONCERN. THE GOVERNORS BELIEVE THAT ONE OF THE MOST EFFECTIVE MEANS FOR CONTROLLING ILLEGAL IMMIGRATION IS TO REDUCE THE ECONOMIC INCENTIVE OF JOBS LURING ILLEGAL IMMIGRANTS ACROSS OUR BORDERS.

THE INCENTIVE CAN BE ELIMINATED BY PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS. HOWEVER, THE ENFORCEMENT MECHANISMS DEVELOPED SHOULD NOT SHIFT UNDUE ADMINISTRATIVE BURDENS TO EMPLOYERS. FURTHER, THE SYSTEM MUST INCLUDE SAFEGUARDS TO PREVENT DISCRIMINATION AGAINST HIRING MINORITY WORKERS BECAUSE OF UNWARRANTED SUSPICION.

THE NATIONAL GOVERNORS' ASSOCIATION SEES A CRITICAL NEED TO PROVIDE A FAIR AND EXPEDITIOUS REVIEW OF ASYLUM CASES. ESTIMATES INDICATE THAT THERE CURRENTLY IS A BACKLOG OF MORE THAN 140,000 PEOPLE AWAITING ASYLUM PROCEEDINGS, AND THIS DOES NOT INCLUDE THE THOUSANDS OF CUBAN AND HAITIAN ENTRANTS. CLEARLY, THE EXISTING SYSTEM IS WOEFULLY INADEQUATE.

IN JULY 1981, U.S. ATTORNEY GENERAL WILLIAM FRENCH SMITH AFFIRMED THAT THE CURRENT SITUATION IS A DEBACLE WHEN HE SAID THE ASYLUM EXCLUSION PROCESSING SYSTEM HAD "CRUMBLLED UNDER THE BURDEN OF OVERWHELMING NUMBERS." YET TO THIS DAY, THE PROCESSES FOR ASYLUM AND EXCLUSION HAVE YET TO BE REBUILT.

CONCERNING LEGAL IMMIGRATION, THE NATIONAL GOVERNORS' ASSOCIATION RECOGNIZES THIS COUNTRY'S RESPONSIBILITY TO CONTINUE ACCEPTING IMMIGRANTS AT A GENEROUS LEVEL. BUT THE GOVERNORS ALSO RECOGNIZE THAT OUR NATION NO LONGER HAS UNLIMITED FRONTIERS OR UNCEASING PUBLIC RESOURCES. THEREFORE, THE GOVERNORS SUPPORT CONTROL OF LEGAL IMMIGRATION AT A LEVEL CONSISTENT WITH OUR NATIONAL INTEREST UNDER A CEILING ADJUSTED PERIODICALLY AS CONDITIONS WARRANT. THE CEILING SHOULD PROVIDE DISTINCT AND SEPARATE ADMISSION CATEGORIES FOR FAMILIES AND FOR INDEPENDENT IMMIGRANTS, THE TWO MAJOR TYPES OF IMMIGRANT. THIS CEILING, HOWEVER, DOES NOT INCLUDE REFUGEES.

MY FINAL POINT THIS AFTERNOON ADDRESSES THE ISSUE OF PRESIDENTIAL EMERGENCY AUTHORITY.

THE NATIONAL GOVERNORS' ASSOCIATION SUPPORTS THE PROPOSAL TO PROVIDE THE PRESIDENT WITH NECESSARY EMERGENCY AUTHORITY TO ACT QUICKLY AND DECISIVELY IN THE FACE OF AN UNEXPECTED MASS IMMIGRATION OF PEOPLE SEEKING ASYLUM IN THIS COUNTRY. HOWEVER, THE GOVERNORS HAVE NOT ADOPTED A POSITION AS TO WHETHER EMERGENCY AUTHORITY PROVISIONS SHOULD BE INCLUDED IN IMMIGRATION REFORM LEGISLATION OR TREATED SEPARATELY. THIS IS A MATTER THAT SHOULD WARRANT YOUR CONSIDERATION AS YOU DELIBERATE HOW BEST TO ENACT THE REFORMS BEING PROPOSED.

GOVERNOR GRAHAM, IN ADDITION, FEELS THAT THE ISSUE OF EMERGENCY AUTHORITY IS INTERRELATED TO THE MATTER OF CONTINGENCY PLANNING. WHILE IT IS ENCOURAGING THAT THE FEDERAL GOVERNMENT HAS DRAFTED A CONTINGENCY PLAN, THE GOVERNOR HAS SOME RESERVATIONS ABOUT THE PLAN'S LACK OF DETAIL AND THE VERY LIMITED REVIEW OF THE PLAN BY STATE AND LOCAL GOVERNMENTS.

FLORIDA IS A STATE THAT KNOWS ALL TOO WELL THE CONSEQUENCES OF NOT HAVING A DETAILED CONTINGENCY PLAN WHEN FACED BY AN UNPRECEDENTED MASS IMMIGRATION. THEREFORE, THE GOVERNOR FEELS THAT COMPREHENSIVE REVIEW OF ANY CONTINGENCY PLAN BY REPRESENTATIVES OF STATE AND LOCAL GOVERNMENTS IS ESSENTIAL. IN A TIME OF CRISIS, THESE ARE THE VERY ENTITIES THAT WILL BE PROFOUNDLY AFFECTED AND WILL PROVIDE MUCH OF THE INITIAL RESPONSE ALONG WITH NECESSARY SERVICES.

ON BEHALF OF THE NATIONAL GOVERNORS' ASSOCIATION, GOVERNOR GRAHAM, AND MYSELF, I THANK YOU FOR THE OPPORTUNITY TO BE HERE TODAY.

I WILL BE PLEASED TO ANSWER ANY QUESTIONS.

Mr. MAZZOLI. There is something in what you say. When the Attorney General was with us earlier on, there was a sort of lack of firmness in exactly what the plan was, and if memory serves me correctly, it was stated the U.S. attorney would be the lead person.

The U.S. attorney, with all due respect, is not going to get phone calls answered to the Pentagon or phone calls answered to the White House, and somebody in charge of a response, just like somebody in charge of the task force in south Florida, has got to be far up in the pecking order so they can get the President on the line once in a while, and with due respect to the Attorney General, that person can't do it.

So, as a result of the questions raised, we certainly intend to get into that and to make sure whoever is in charge is sufficiently high in the establishment that his or her word carries strong weight and that they can martial quickly, instantly, the full panoply of government resources to answer that problem, because you are not going to have 3 weeks to work on it. You are going to have a few hours at best, and you can't tell me somebody who occupies the U.S. attorney's office is going to be able to get that job done.

So I appreciate your bringing it up. We now go to Mr. Coffey, the executive director of the National Association of Counties, for 5 minutes.

Mr. COFFEY. Thank you, Mr. Chairman.

I think Supervisor Dana has done an excellent job explaining the county perspective from the local level. Let me say I would like to submit my statement for the record.

Mr. MAZZOLI. All statements will be incorporated in the record.

Mr. COFFEY. First and foremost, the National Association of Counties supports H.R. 1510 as drafted. We find it is superior to the Senate bill, and we urge that you move forward with it with all deliberate speed.

Our policy supports employer sanctions, legalization with strengthened enforcement at the borders and with reimbursement for adverse local impact, this really being the bottom line for county support of the bill.

We support improvements in the H<sup>2</sup> program, with annual ceilings and with the repeal of the exemption from social security and unemployment compensation.

We would support use of the existing forms of identification because we do feel that there are civil liberties problems with a national identification system.

In summary, sir, we urge you to move forward, and we will be happy to work with you in trying to get something done as soon as we can in this Congress.

Mr. MAZZOLI. Thank you very much, Mr. Coffey, and I appreciate your ability to condense your remarks.

[The complete statement follows:]





# National Association of Counties

Offices • 440 First Street, N.W. Washington, D.C. 20001 • Telephone 202/393-NACO

STATEMENT OF  
MATTHEW B. COFFEY  
EXECUTIVE DIRECTOR  
OF  
THE NATIONAL ASSOCIATION OF COUNTIES  
BEFORE THE  
HOUSE JUDICIARY  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES  
AND INTERNATIONAL LAW

MARCH 16, 1983  
WASHINGTON, D.C.

STATEMENT OF MATTHEW B. COFFEY, EXECUTIVE DIRECTOR,  
ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES\* (NACo), BEFORE  
THE HOUSE JUDICIARY SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND  
INTERNATIONAL LAW.

MR. CHAIRMAN, MEMBERS OF THE SUBCOMMITTEE, I AM MATTHEW B.  
COFFEY, EXECUTIVE DIRECTOR OF THE NATIONAL ASSOCIATION OF COUNTIES

NACo WELCOMES THE OPPORTUNITY TO TESTIFY ON THE "IMMIGRATION REFORM AND  
CONTROL ACT OF 1983," WHICH HAS BEEN REINTRODUCED AS IT WAS REPORTED  
BY THE JUDICIARY COMMITTEE LAST YEAR.

THE NATIONAL ASSOCIATION OF COUNTIES CONTINUES TO SUPPORT REFORM  
OF THE NATION'S IMMIGRATION POLICIES, AND WE BELIEVE THAT YOUR BILL  
H.R. 1510 WOULD ACHIEVE MOST OF THE GOALS OF NEEDED REFORM IN A FAIR  
AND EQUITABLE MANNER. WE ARE PLEASED TO LEND OUR ORGANIZATIONAL  
STRENGTH TO YOUR COMMENDABLE EFFORTS TO PASS REFORMS THAT WILL BE  
FAIR AND HUMANE TO IMMIGRANTS, ENFORCEABLE BY THE FEDERAL GOVERN-  
MENT, AND EQUITABLE FOR ALL LEVELS OF GOVERNMENT.

MR. CHAIRMAN, MY PREPARED STATEMENT TODAY IS ESSENTIALLY A  
RESTATEMENT OF THE ASSOCIATION'S POSITIONS ON THE KEY ELEMENTS OF  
THE LEGISLATION, WHICH I WILL HIGHLIGHT BRIEFLY, IN ORDER TO FOCUS  
IN MY PRESENTATION ON THE STILL CONTROVERSIAL ISSUE OF REIMBURSEMENT  
FOR COSTS OF THE LEGALIZATION PROPOSAL. THE STATEMENT I AM SUBMITTING  
EXPANDS ON EACH OF THE OTHER PROVISIONS: EMPLOYER SANCTIONS, WHICH

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\*THE NATIONAL ASSOCIATION OF COUNTIES IS THE ONLY NATIONAL ORGANIZA-  
TION REPRESENTING COUNTY GOVERNMENT IN THE UNITED STATES. THROUGH ITS  
MEMBERSHIP, URBAN, SUBURBAN, AND RURAL COUNTIES JOIN TOGETHER TO BUILD  
EFFECTIVE, RESPONSIVE COUNTY GOVERNMENT. THE GOALS OF THE ORGANIZATION  
ARE TO: IMPROVE COUNTY GOVERNMENT; SERVE AS THE NATIONAL SPOKESMAN FOR  
COUNTY GOVERNMENT; ACT AS A LIAISON BETWEEN THE NATION'S COUNTIES AND  
OTHER LEVELS OF GOVERNMENT; ACHIEVE PUBLIC UNDERSTANDING OF THE ROLE OF  
COUNTIES IN THE FEDERAL SYSTEM.

WE SUPPORT WITHOUT THE CREATION OF A NATIONAL WORKER IDENTIFICATION SYSTEM; SUPPORT FOR LEGALIZATION; AND IMPROVEMENTS IN THE TEMPORARY WORKER H-2 PROGRAM.

WE BELIEVE IT IS ESSENTIAL THAT THE FEDERAL GOVERNMENT, WHICH HAS SOLE AUTHORITY AND RESPONSIBILITY FOR ADMISSION POLICIES AND THE SECURITY OF AMERICA'S BORDERS, BE ABLE TO CONTROL ILLEGAL IMMIGRATION. WE RECOGNIZE THE ORDERLY TRANSITION OF MILLIONS OF ILLEGAL IMMIGRANTS WITHIN OUR BORDERS TO PERMANENT LEGAL RESIDENT STATUS AS A NECESSARY AND POSITIVE STEP TOWARD GAINING CONTROL.

#### LEGALIZATION PROGRAM

NACO SUPPORTS A NATIONAL PROGRAM TO LEGALIZE THE STATUS OF ILLEGAL ALIENS WHO CAN DEMONSTRATE CONTINUOUS RESIDENCE IN THE U.S. FOR THREE YEARS OR MORE, AND WHO ARE NOT OTHERWISE EXCLUDABLE. WE SUPPORT A LEGALIZATION PROGRAM IF TWO CONDITIONS ARE MET:

- FIRST, THE FEDERAL GOVERNMENT TAKES STRONG ENFORCEMENT MEASURES, INCLUDING EMPLOYER SANCTIONS, TO CONTROL ILLEGAL IMMIGRATION; WITHOUT STRONG ENFORCEMENT AT U.S. BORDERS, LEGALIZING THE STATUS OF ILLEGAL ALIENS CURRENTLY RESIDING IN THE U.S. WOULD SERVE AS AN OPEN INVITATION FOR ADDITIONAL PERSONS TO ENTER THIS COUNTRY ILLEGALLY IN ANTICIPATION OF QUALIFYING UNDER A FUTURE LEGALIZATION PROGRAM. THREE TO SEVEN MILLION ILLEGAL ALIENS ARE IN THIS COUNTRY TODAY BECAUSE OF THE FEDERAL GOVERNMENTS FAILURE TO CONTROL OUR NATIONAL BORDERS.
- SECOND, COUNTIES AND STATES ARE FULLY REIMBURSED FOR COSTS RESULTING FROM A LEGALIZATION PROGRAM. STATES AND COUNTIES SHOULD NOT HAVE TO BEAR THE COSTS OF A FEDERALLY CREATED PROGRAM.

ALTHOUGH WE FULLY SUPPORT THE PURPOSES AND OBJECTIVES OF LEGALIZATION, NACo'S SUPPORT FOR LEGALIZATION IS CONTINGENT UPON ADEQUATE FEDERAL REIMBURSEMENT OF ANY ADDITIONAL COSTS ACCRUING TO COUNTY BUDGETS, AS WELL AS UPON STRONG ENFORCEMENT MEASURES.

OUR ASSOCIATION FULLY SUPPORTS THE REIMBURSEMENT MECHANISM CONTAINED IN YOUR BILL, KNOWN AS THE EDWARDS AMENDMENT. WE BELIEVE THAT A PROVISION FOR FULL REIMBURSEMENT IS NECESSARY TO PROTECT LOCAL GOVERNMENTS AGAINST THE POTENTIAL FOR INCREASED COSTS OF HEALTH, WELFARE, AND EDUCATION FOR LEGALIZED ALIENS. THE BLOCK GRANT REIMBURSEMENT PROVISION IN THE SENATE BILL (S. 529) DOES NOT ASSURE COUNTIES THAT THE FEDERAL GOVERNMENT WILL BE FULLY RESPONSIBLE FOR, OR EVEN SHARE EQUALLY, IN ANY COSTS THAT MIGHT ARISE FROM THE LEGALIZATION OF MILLIONS OF PERSONS.

COUNTIES OFTEN ARE RESPONSIBLE FOR PROVIDING HEALTH, WELFARE, AND SOCIAL SERVICES TO PERSONS RESIDING WITHIN THEIR BOUNDARIES, REGARDLESS OF LEGAL STATUS. THEREFORE, FEDERAL IMMIGRATION POLICIES CAN HAVE A DIRECT COST IMPACT ON COUNTIES WHERE CONCENTRATION OF LEGALIZATION WILL OCCUR.



SINCE BOTH THE NUMBERS OF LEGALIZED PERSONS AND THE LOCAL ASSISTANCE PROGRAMS WILL VARY BY AREA, IT IS NECESSARY TO TIE RE-IMBURSEMENT TO ACTUAL COSTS, ESPECIALLY FOR HEAVILY IMPACTED AREAS. IN SOME LOCALITIES, THESE COSTS MAY INDEED BE MINOR, BUT THE POTENTIAL FOR SIGNIFICANT COSTS DOES EXIST FOR SOME COUNTIES.

I RECOGNIZE THAT MOST PERSONS BECOMING LEGALIZED WILL HAVE AT LEAST A THREE YEAR RECORD OF EMPLOYMENT IN THE U.S., AND THAT THEY WILL HAVE PASSED THE "PUBLIC CHARGE" TEST. YET, WE MUST ALSO RECOGNIZE THAT MANY ILLEGAL IMMIGRANTS ARE EMPLOYED AT MINIMUM WAGES OR OTHER JOBS THAT DO NOT OFFER ADEQUATE HEALTH CARE PROTECTION, NOR A TRUE HEDGE AGAINST DESTITUTION WHEN UNEMPLOYMENT STRIKES. WITHOUT ARGUING THE PROJECTED NUMBERS OR COSTS, I THINK IT'S FAIR TO ASSUME THAT A GOOD NUMBER OF NEWLY LEGALIZED RESIDENTS ARE LIKELY TO EXPERIENCE UNEMPLOYMENT AND NEED FOR LOCAL HEALTH AND PUBLIC ASSISTANCE, AND THAT THE COSTS OF SUCH ASSISTANCE WOULD FALL DISPROPORTIONATELY ON THE RELATIVELY FEW LOCAL GOVERNMENTS THAT HAVE LARGE NUMBERS OF IMMIGRANTS AND A MANDATED OR TRADITIONAL RESPONSIBILITY TO PROVIDE FOR THE INDIGENT.

FURTHER, I RECOGNIZE THAT YOUR BILL WOULD PERMIT STATES AND LOCAL GOVERNMENTS TO DENY ASSISTANCE AND HEALTH CARE TO LEGALIZED ALIENS, IN KEEPING WITH THE RESTRICTIONS ON FEDERAL ELIGIBILITY THAT WOULD BE IN PLACE. BUT WE ARE SKEPTICAL THAT PLACING A BAN ON HEALTH CARE ELIGIBILITY WOULD EFFECTIVELY KEEP COSTS DOWN, BECAUSE REMOVING THE FEAR OF DETECTION AND DEPORTATION WILL ENABLE NEEDY IMMIGRANTS TO MAKE USE OF SERVICES WHICH THEY CURRENTLY POSTPONE OR DO WITHOUT, ESPECIALLY HEALTH CARE.

AT A MINIMUM, WE BELIEVE THAT THE FEDERAL GOVERNMENT SHOULD BEAR THE COSTS OF ANY LOCAL ASSISTANCE ARISING FROM LEGALIZATION.

THE REST OF MY STATEMENT SETS FORTH OUR POSITIONS AND RECOMMENDATIONS ON THE OTHER KEY PROVISIONS OF THE BILL.

EMPLOYER SANCTIONS AGAINST HIRING ILLEGAL ALIENS

NACo STRONGLY SUPPORTS CIVIL PENALTIES FOR EMPLOYERS WHO HIRE ILLEGAL ALIENS. IT IS OUR POSITION THAT EMPLOYER SANCTIONS ARE A NECESSARY FACTOR IN CURBING ILLEGAL IMMIGRATION.

ALTHOUGH NACo SUPPORTS SANCTIONS ON EMPLOYERS WHO HIRE ILLEGAL ALIENS, WE BELIEVE THEY SHOULD NOT BE APPLIED TO THE RECRUITMENT OR REFERRAL OF INDIVIDUALS FOR EMPLOYMENT. BECAUSE MANY MORE PERSONS ARE RECRUITED OR REFERRED THAN ARE HIRED FOR EMPLOYMENT, MONITORING RECRUITMENTS AND REFERRALS WILL BE A COSTLY ADMINISTRATIVE BURDEN FOR BOTH THE FEDERAL GOVERNMENT AND PUBLIC AND PRIVATE EMPLOYMENT AGENCIES.

WITH REGARD TO AN IDENTIFICATION SYSTEM FOR EMPLOYMENT ELIGIBILITY, NACo SUPPORTS THE USE OF EXISTING FORMS OF IDENTIFICATION THAT THE ACT SPECIFIES WOULD BE USED DURING THE FIRST THREE YEARS AFTER ITS ENACTMENT. HOWEVER, NACo OPPOSES THE IMPLEMENTATION OF A NATIONAL IDENTIFICATION SYSTEM TO DETERMINE EMPLOYMENT ELIGIBILITY. THE SYSTEM WOULD POSE A POTENTIAL THREAT TO CIVIL LIBERTIES. ADDITIONALLY, NACo QUESTIONS WHETHER THE BENEFITS OF INSTITUTING A WORK AUTHORIZATION SYSTEM WOULD OUTWEIGH ITS ADDED COSTS--WHICH COULD EXCEED ONE BILLION DOLLARS.

NACo DOES SUPPORT STIFF PENALTIES FOR THE SALE, DISTRIBUTION, USE OR POSSESSION OF COUNTERFEIT DOCUMENTS. STRONG ENFORCEMENT EFFORTS AGAINST THE USE OF FALSE DOCUMENTS WOULD REDUCE ANY NEED TO DEVELOP A UNIVERSAL IDENTIFICATION SYSTEM.

BORDER ENFORCEMENT

NACo STRONGLY SUPPORTS PROVISIONS IN THE BILL WHICH CALL FOR AN INCREASE IN BORDER AND INTERIOR ENFORCEMENT EFFORTS TO CURB ILLEGAL IMMIGRATION. WE BELIEVE THAT THE IMMIGRATION AND NATURALIZATION SERVICE (INS) HAS NOT RECEIVED SUFFICIENT FUNDS AND RESOURCES TO ENABLE IT TO EFFECTIVELY CARRY OUT ITS RESPONSIBILITY TO PREVENT ILLEGAL ENTRY INTO THE U.S.

TEMPORARY WORKERS

WE ARE PLEASED THAT THE ACT WOULD NOT ESTABLISH A NEW TEMPORARY WORKER PROGRAM. IN THIS TIME OF HIGH UNEMPLOYMENT, WE BELIEVE THAT TEMPORARY WORKERS CAN HAVE THE SAME DETRIMENTAL EFFECTS ON THE DOMESTIC LABOR MARKET AS DO ILLEGAL ALIENS--THAT IS, THEY CAN TAKE AWAY JOBS FROM AMERICAN WORKERS AND DEPRESS WAGES.

NACo DOES NOT OPPOSE THE PROPOSED CHANGES IN THE EXISTING H-2 PROGRAM, PROVIDED AT LEAST THREE CONDITIONS ARE MET:

- FIRST, AN ANNUAL CEILING SHOULD BE PLACED ON THE NUMBER OF FOREIGN WORKERS ADMITTED UNDER THIS PROGRAM TO ENSURE THAT THE PROPOSED CHANGES DO NOT RESULT IN A SIGNIFICANT INCREASE IN THE NUMBERS ADMITTED INTO THE U.S. JUST AS AN ANNUAL CEILING IS IMPOSED ON LEGAL IMMIGRATION INTO THE COUNTRY, A CEILING SHOULD ALSO BE IMPOSED ON THE NUMBERS OF FOREIGN H-2 WORKERS ADMITTED ANNUALLY.
- SECOND, THE EXEMPTIONS FROM SOCIAL SECURITY AND UNEMPLOYMENT INSURANCE TAXES CURRENTLY GIVEN TO EMPLOYERS OF H-2 WORKERS SHOULD BE ELIMINATED. THESE EXEMPTIONS ARE ECONOMIC INCENTIVES FOR EMPLOYERS TO HIRE FOREIGN LABOR INSTEAD OF AMERICAN WORKERS.

- THIRD, LANGUAGE SHOULD BE ADDED TO THE ACT TO ENSURE THAT H-2 WORKERS DO NOT BURDEN LOCAL PUBLIC HEALTH CARE FACILITIES, WHICH ARE MANDATED TO PROVIDE CARE TO ALL PERSONS, REGARDLESS OF THEIR LEGAL STATUS OR ABILITY TO PAY. ONE POSSIBILITY WOULD BE TO REQUIRE THAT ALL H-2 WORKERS HAVE PRIVATE HEALTH INSURANCE COVERAGE TO BE PAID BY THE EMPLOYER AND/OR H-2 WORKER. NACo FIRMLY BELIEVES THAT THE ALREADY FINANCIALLY STRAPPED LOCAL PUBLIC HOSPITALS SHOULD NOT HAVE TO BEAR ADDED COSTS RESULTING FROM THE ENTRY OF FOREIGN WORKERS.

WE SUPPORT THE PROPOSAL TO AUTHORIZE AN ANNUAL APPROPRIATION OF \$10 MILLION FOR THE PURPOSE OF RECRUITING DOMESTIC WORKERS FOR JOBS WHICH WOULD OTHERWISE BE PERFORMED BY FOREIGN H-2 WORKERS, AND FOR MONITORING THE TERMS AND CONDITIONS UNDER WHICH H-2 WORKERS ARE EMPLOYED IN THE U.S.

IN CLOSING, NACo SUPPORTS THE BASIC THRUST OF THE BILL, WHICH IS TO ACHIEVE GREATER CONTROL OVER IMMIGRATION--LEGAL AND ILLEGAL--INTO THE U.S. IT IS OUR FIRM POSITION THAT THE FEDERAL GOVERNMENT, WHICH IS RESPONSIBLE FOR BOTH DETERMINING AND IMPLEMENTING NATIONAL IMMIGRATION POLICIES--INCLUDING CONTROLLING OUR BORDERS AGAINST ILLEGAL ENTRY--SHOULD ALSO BE RESPONSIBLE FOR THE COSTS AND IMPACTS OF SUCH POLICIES, OTHERWISE, IT IS ALL TOO EASY FOR THE FEDERAL GOVERNMENT TO OVERLOOK THE FISCAL IMPACTS OF IMMIGRATION ON OTHER LEVELS OF GOVERNMENT.

THANK YOU FOR THE OPPORTUNITY TO SPEAK BEFORE YOU. I AM PREPARED TO ANSWER ANY QUESTIONS YOU MAY HAVE.



Mr. MAZZOLI. We now recognize Mr. James A. Krauskopf, commissioner, Human Resources Administration of the city of New York, on behalf of the U.S. Conference of Mayors.

Mr. KRAUSKOPF. Thank you, Mr. Chairman.

Mr. Chairman and members of the subcommittee, I am Jack Krauskopf, commissioner of the Human Resources Administration, which is the local government agency in New York responsible for public assistance, medicaid, and social service programs.

As you know, I am also appearing on behalf of the U.S. Conference of Mayors and their city human services officials.

As you know, the city has long played a special historical role in welcoming newcomers to the country, and we have been very interested in the provisions of the Immigration Reform and Control Act.

This is my first opportunity to appear before the committee, but I did have a chance to attend one of the consultation sessions with you and other members of the committee last year, where I had a chance to discuss some of our concerns.

There are 600,000 immigrants, refugees, and Cuban and Haitian entrants in the city, and we have probably as broad a mix of nationalities as any city in the country. We also have an undocumented alien population that is estimated somewhere between 500,000 to 750,000. Many of the goals of these individuals are similar to the goals of the legal immigrants who are in the city.

We recognize the very difficult work that the committee has had in balancing the very varied interests, and we have had an opportunity this morning to see a portion of it, and I know the interests you have to balance and put together in this legislation, and we know the legalization program is a key part, and that is a subject I would like to address in particular.

The legalization program is certainly a humanitarian and realistic response to the problems of many undocumented people who are living in New York and other cities around the country. These are people who have the same aspirations for a decent life and jobs and an opportunity to raise their families as others do and also people who contribute through paying taxes to the communities in which they live.

Our concern, however, with the legislation is the potential cost to state and local government of the legalization program. We want to be sure that in whatever form a legalization program is finally adopted, that it must provide for Federal benefits to compensate for expenses that State and local governments are likely to incur by the legalization process.

Both the House and Senate versions, as you know, do not include eligibility for Federal assistance programs, such as AFDC, medicaid, and other social service programs. However, many of the newly legalized persons, either the temporary residents or the permanent residents, under the act would be eligible for local and State programs of public assistance and social services, not just in New York but in many other States.

It is very difficult to estimate what those costs would be, but we don't think the legislation should unfairly shift the burden of whatever those costs are to the State and local level, and we are asking that there be Federal assistance for the actual costs which are incurred.

On that subject, we greatly prefer the House version of the bill as it now stands H.R. 1510, with the Edwards amendment, as it has been called, provides for 100 percent Federal reimbursement for 4 years for these costs.

We recognize that the reimbursement mechanism is not open-ended; it does guarantee, however, that affected localities will be reimbursed for actual costs.

We are concerned about the Senate version of the bill—the block grant approach which has been discussed. There is no assurance that it will provide an adequate level of reimbursement, nor are we happy with the formula that is in the Senate version of the bill.

There isn't any clear definition of the formula, and some of the items in the formula would not take into account a number of things that might vary from locality to locality, such as the extent of secondary migration, differences in cost of living, different dependency levels, and different assistance levels, and so forth.

So for these reasons, we strongly favor the House approach, and we would reject the idea of the block grant.

As you know, cities and counties and States have already absorbed a tremendous burden as a result of the Federal budget cuts in the social services area in the last 2 years, and there has been a great transfer of costs. We estimate about \$870 million to the State and local level as a result of the Federal budget cuts which have occurred, and we don't want to incur additional costs as a result of a legalization program.

We have State constitutional provisions, as do other States, that would require that we provide care for the needy. That would include things like general assistance and medical benefits, and we want to insure that there is Federal reimbursement.

We also recognize—and I know the chairman has pointed this out frequently—that many of the people who would become legalized under the provisions of this act are hardworking people. They have not come here to get public assistance.

We do not expect many of them will go onto public assistance, but we also recognize that many of them are working and in low skilled or marginal occupations, where they are subject to layoffs and unemployment as a result of the kinds of things that have been happening over the last couple of years when the economy has been bad. It is possible that this could occur again in the future.

What we are asking for is simply the recognition that there may be the same level of dependency in this group. We don't know how to estimate it exactly, but there may be the same level of dependency in this group as there is in the general population, and we could not afford to sustain a burden like that if it were to fall purely on State and local government.

Mr. MAZZOLI. Mr. Krauskopfh, I think your time has expired. Do you need another minute?

Mr. KRAUSKOPFH. The only concluding comment I want to make is that we are requesting the Federal Government to simply share in whatever the risks are of providing assistance to these people.

Mr. MAZZOLI. Thank you very much.

[The complete statement follows:]

TESTIMONY OF

JAMES A. KRAUSKOPFH, COMMISSIONER

HUMAN RESOURCES ADMINISTRATION,

NEW YORK CITY

before the

SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW

U.S. HOUSE COMMITTEE ON THE JUDICIARY

March 16, 1983

Mr. Chairman and members of the Subcommittee, I am Jack Kruskopf, Commissioner of the Human Resources Administration in New York City. On behalf of New York City, the United States Conference of Mayors, and its affiliate, the Conference of City Human Services Officials, I appreciate this opportunity to testify today on H.R. 1510, "The Immigration Reform and Control Act of 1983."

New York City has played a special historical role in welcoming newcomers to this country and in assisting those in need. We intend to continue this mission. As home to over 600,000 immigrants, refugees, and Cuban and Haitian entrants, New York City takes a special interest in the proposed comprehensive change in our national immigration policies.

While the 1980 census shows a new mix of nationalities among New York's foreign born population, their needs are similar to those of previous immigrants — decent work opportunities, a better life for their families, and a haven from political or economic oppression. The undocumented alien population in the City, estimated at 500,000 to 750,000, shares many of these goals as well.

We commend the Subcommittee for having taken on an enormously complex task in developing this legislation. The Chairman and Subcommittee members have built upon the recommendations of the Select Commission on Immigration and Refugee Policy and President Reagan's Task Force on Immigration and Refugee Policy to produce a package of carefully balanced measures. The legalization program, contained in this legislation, would address the needs of many aliens now living in fear of government detection, and other measures to deter future



entries. The legalization program would grant permanent resident status to undocumented aliens who have continuously resided in the United States since 1977, and temporary resident status to those who can document continuous residence since 1980.

I commend the legalization program as both humanitarian and realistic. Newly legalized persons would be free to live securely within their communities and advance within their jobs. Indeed, immigrants have had an invigorating effect on our local economic and cultural life: they fill difficult jobs; they revitalize neighborhoods by buying small businesses and homes; they pay income and sales taxes; and they infuse our communities with cultural diversity.

Our principal concern with the proposed legislation is the potential costs that it could generate for states and localities. This concern is shared by cities and counties from the Northeast to the Southwest that have large undocumented populations. The federal government, which sets immigration policy, must either permit legalized aliens to receive federal benefits or underwrite the state and local costs of providing services to this special population.

Both the House and Senate versions of the bill preclude the newly legalized population from eligibility for federal assistance programs, including AFDC, Medicaid and Food Stamps. In the case of temporary residents, the prohibition against receiving federal assistance would last six years; for permanent residents, the prohibition period would be three years. At the same time, however, newly legalized persons who are not eligible for federal aid would be eligible for public assistance and social services programs funded by states and localities.

It is difficult to estimate the costs that states and localities will incur following legalization, because we do not know the size of the eligible population, how many will come forward, and their need for services in future years. We feel strongly, however, that a new federal policy towards undocumented aliens must not unfairly shift the economic burden of legalization to states and localities. Any major immigration reform must include a mechanism for providing affected states and localities with federal assistance for actual costs incurred.

This Subcommittee recognizes a federal fiscal responsibility for newly legalized aliens and the need to provide reimbursement to states and localities for costs resulting from legalization. H.R. 1510 provides for 100 percent federal reimbursement for the medical and public assistance costs of legalization for four years, subject to annual appropriations. In addition, it allows federal aid for blind, aged and disabled people, and emergency health care for both permanent and temporary residents. It also allows federal aid for the costs of educating legalized aliens. While this reimbursement mechanism is not open-ended, since it permits Congress to set a ceiling on funds available every year, it does guarantee affected localities a certain level of reimbursement based on actual costs.

The Senate has adopted a different approach in S. 529. They have included an impact assistance block grant for states which has several major shortcomings.

First, there is no assurance of an adequate amount of reimbursement. The amount allocated to any individual state is not based on actual costs: rather it will depend on a formula that has yet to be determined. The formula would take into account the number of legalized aliens in a state, the number of

legalized aliens in a state compared to the State's total population, and the State's expected expenditures for the public assistance and health care needs of its legalized aliens. However, the formula is unlikely to accurately reflect the extent of secondary migration among the states or the differing costs of living, welfare and Medicaid dependency rates, and assistance levels that could result in substantial expenditures in a number of states and major cities.

Second, the block grant proposed in S.529 would provide reimbursement only of "net " state and local expenditures. This means that the amount of federal reimbursement will be determined only after deducting state and local taxes paid by participants in the legalization program. This would set an undesirable precedent for future local, state, and federal relations. This provision ignores the use by legalized aliens of other local services, such as subways, fire protection, sanitation, streets, and police protection, which primarily rely on local taxes for support. For these reasons we strongly favor the House approach and urge that the House continue to reject the use of a block grant to fund the state and local costs of legalization.

Federal reimbursement for the cost of legalization is crucial to cities around the country like New York, which have large concentrations of undocumented aliens. Cities, counties and states have already been forced to absorb tremendous budget reductions in federal programs, particularly in those public assistance and social services programs legalized aliens might turn to in times of need. For example, in 1983, New York City lost over \$870 million in federal funds, including cutbacks in public assistance, CETA, Medicaid and the block grants. The loss in federal block grant funds this past year totalled \$34

million, including approximately \$18 million from the Social Services Block Grant, \$9 million from the Education Block Grant and \$5 million from the Community Services Block Grant.

Many states must continue to provide assistance and services despite these budget cuts. New York must serve the needy according to its State Constitution and laws. Presently, the undocumented population has no right to social welfare benefits. The proposed legislation, however, would create a large pool of legalized persons barred from federal benefits for a period of three to six years but eligible for state and local benefits during that time.

Because of the paucity of data on undocumented aliens, it is impossible to furnish accurate projections of New York City's costs if a legalization program were implemented. We do know, however, that undocumented aliens often come to this country because they are striving to improve their economic status, and many currently hold jobs. It is undeniable that aliens are hard working, highly motivated individuals; however, most work in unskilled and semi-skilled jobs, which are extremely sensitive to the structural and cyclical changes of the economy. Moreover, even newly legalized aliens who are employed are vulnerable to high medical expenses and they may or may not be covered by health insurance through their employment.

Our estimate of the potential cost of the legislation assumes that most, but not all, of the undocumented aliens in New York City who are eligible for legalization will come forward, and that some portion of these would need government assistance sometime in the future. Specifically, we assumed a 12 percent dependency rate for AFDC and General Assistance and 13 percent for Medicaid. These rates are the same as the dependency rates of the general



population in New York City and are significantly lower than refugee-related dependency rates. Based on these assumptions, we derived a potential cost of \$30 to \$40 million. Even if the dependency rates of newly legalized aliens were half of our estimate, the legislation could still cost \$15 to \$20 million, which is a considerable expenditure for a local government to bear alone. In New York City, like many cities and states around the country, we have no cushion in our local budget to absorb these added assistance expenditures.

The benefits that would be available to newly legalized persons in New York City, include General Assistance, Medicaid, social services, vocational training, day care and other programs. General assistance and medical costs are expected to be the largest portion of the state and local costs resulting from this legislation.

Other cities share our concern about the cost of providing needed services to legalized aliens. For example, officials in Orange County, California estimate that their local population includes 150,000 to 200,000 undocumented aliens, of whom 40,000 to 50,000 reside in Santa Ana alone. The costs of legalization in that area could easily reach several millions of dollars annually. In Denver, the city's population of over 400,000 includes an estimated 10,000 undocumented aliens. Officials there estimate that legalization would cost the city approximately \$1 million annually for increased welfare and social services expenditures. The \$1.4 million that Denver is estimated to already spend on health care for undocumented aliens could increase substantially as the newly legalized population makes greater use of existing publicly funded health facilities, once the fear of detection is removed.

In conclusion, we support the efforts of the Subcommittee and the Congress to grant legal status to undocumented aliens who have established roots in this country. We support the approach that the Judiciary Committee has taken to assure federal reimbursement for state and local costs resulting from legalization and urge that you reject the block grant approach contained in the Senate bill. The fiscal protection provided by H.R. 1510 is of crucial importance to state and local governments.

Mr. MAZZOLI. Mr. Dana, I noticed an interesting thing you brought up about the health screening. I had not really thought about it until I read your statement last night.

My staff tells me that it apparently is the intention of the Immigration Service to have a health screening process for people as if they were coming into the regular stream of immigrants, and of course there are exclusions in the law that deal with certain diseases.

I think there is a slightly more open question in the form of services provided by the Public Health Service which doctors would have to spell out the details of expenses. There is a slightly open question on inoculation and protection against certain kinds of communicable diseases, but that might also be a possibility.

Mr. DANA. They need that for the schools, to go to the schools anyway, and they have that.

Mr. MAZZOLI. I guess the Constitution requires shots. Obviously, a parent can't prevent children from getting shots, is that correct?

Mr. DANA. You see, in Los Angeles we are faced with this problem, obviously, with the tremendous numbers coming in, and we have high incidences of tuberculosis and communicable diseases, and we constantly have to encourage them to go to these health centers.

Mr. MAZZOLI. Part of the problem, I know, is from the refugees. We have been talking about that for the last 2 years.

Let me ask all of you gentlemen, do you prefer a reimbursement formula rather than a block grant?

Let me just go from right to left. What do you think, Mr. Coffey?

Mr. COFFEY. I think from the county perspective the county is the provider of last resort in the society, and for a variety of areas—health care as well as general assistance—and so we have already seen the impact of these waves of immigration, and you cannot anticipate the future, as you say, but I think that what we are pushing hard on is that, yes, we need to have that reimbursement mechanism to address what is essentially a Federal responsibility of guarding the borders, which has not been done.

Mr. MAZZOLI. Mr. Krauskopfh.

Mr. KRAUSKOPFH. I agree with the chairman's statement. We don't think people come into this country, either legally or illegally, in order to get public assistance or medical aid or any of the other benefits. But the same things happen to them as happen to citizens, and that is that they lose jobs and they become subject to needing public assistance, and I think it is the Federal Government's responsibility as is the immigration responsibility to share in those costs.

Mr. MAZZOLI. Mr. Dana.

Mr. DANA. Well, this is why the 3 and 6 years seem pretty good. It does provide some protection.

Mr. MAZZOLI. That was going to be my second question.

Mr. DANA. But we do fear, as I said, the disease nature of the thing, and we feel we have to provide for that.

Mr. MAZZOLI. Mr. Pingree.

Mr. PINGREE. We certainly wouldn't want to encourage dependency. However, it is a decision to be made by the Federal Govern-

ment, not by State and local government, and they should not bear the burden.

There probably are some compromise positions, which have already been suggested. An example would be the qualification to a certain number of years.

Mr. MAZZOLI. Let me ask you this as a sort of follow-on to that. The people would, under your formula, be entitled to certain kinds of assistance. What happens if under—as under our bill—we say that not only the Federal Government's form of assistance is disqualified for a period of 3 or 6 years, but that the States are hereby authorized to further disqualify these newly legalized from taking part in certain programs?

What do you think would be the net effect of that? Assuming that it is constitutional and the authority is in your hands, what do you think the net effect of that would be in the State of Florida?

Mr. PINGREE. We still need some other provisions. For example, emergency assistance for those who wouldn't qualify for an ongoing program of welfare. At least funds should be available to provide emergency assistance because if the State would say: "OK, we are not going to participate. We are not going to allow these people to be helped," who ends up with the responsibility for aid then?

As a State, we don't want to shift that burden to the cities and counties. Our experience has been that when they start sleeping under expressways and on boats in the harbors, and so forth, it is the local government which has to provide assistance, not for just public health reasons but for humanitarian reasons. You have to keep looking down the road.

Who are you bumping the responsibility to down the road? Voluntary agencies? Someone is going to have to take care of this person, and for the Federal Government to say, hey, we wash our hands of it, is—

Mr. MAZZOLI. So you say, as a practical matter, even though you may have the authority to disqualify these because it would be so important to their continued life and well-being, you feel that the pressure would build up, or you have this feeling of humanity and would go ahead and give the help anyway; is that the general idea?

Mr. PINGREE. Of course, it would vary, depending on how many illegal aliens you have in your community. For example, the impact in Los Angeles County or Miami, Fla., may be lessened by an impact aid program or community organizations that can absorb up to a certain number of people.

But when you are talking about hundreds of thousands of people, it is not reasonable to expect the community to do that.

Mr. MAZZOLI. Mr. Supervisor, what would you say if Los Angeles County would, as under our bill, have the opportunity to disqualify people from State forms of assistance? Would it work?

Mr. DANA. I would personally—I can't speak for the other members of the panel—but I personally think from a general assistance aspect if you disqualify them from both Federal and State, that is a check you are giving them. Of course, they are coming up from a country where they make 9-cents-an-hour and we are going to provide them \$5, and that is an incentive. I think in that case—as I say, I am not sure the members of the board agree with the general assistance.



I think we would have to provide and make clearly some form of emergency medical care available.

Mr. MAZZOLI. Mr. Krauskopf.

Mr. KRAUSKOPF. I am not an attorney like the morning panel, but there are provisions in the State constitution, so I don't know whether the Federal Government could authorize us. I think we still would not avoid all the costs, even if we weren't paying cash assistance. We would be treating people in municipal hospitals, and it would be hard to deny somebody.

We don't really know, if someone walks into a municipal hospital, what their particular status is. If they are ill or injured, they are going to get treatment. We have city-financed shelters for the homeless, and we undoubtedly would be serving some people that way. There are other forms of assistance, and so we wouldn't really avoid the cost.

Mr. MAZZOLI. Mr. Coffey.

Mr. COFFEY. I agree with what has been said. I think you find many States where it is mandated the county or local government would take care of the problems, and you run into the face of that with this provision. Besides that, I think it is just in the basic American character, we like to take care of people in need, and through the policing provisions or whatever they will wind up in the care of the local government.

Mr. MAZZOLI. Well, I thank you, gentlemen. My time has expired.

The gentleman from California.

Mr. LUNGREN. I would like to pick up on that. One of the problems I have in dealing with a lot of average citizens on the question of immigration, particularly when we were inundated with a large number of Southeast Asian refugees, was the people weren't upset because they were coming, because they all came from somewhere, but they related back to when their generation came they didn't have all this panoply of programs.

With all due respect, I don't think it is the problem of the U.S. Federal Government that we say if you have the ability to disestablish those programs or establish those programs with respect to these people, we ought to bear the brunt if you decide to do that.

I take it you all agree that the Federal Government hasn't done a very good job of policing its borders and that that has caused a problem.

How many would agree we should take all revenue sharing away and put it in INS instead?

The reason I say that, the INS total budget is half a billion dollars. Now what is revenue sharing—\$2 billion or \$1½ billion?

Whatever it is, we could double or triple or quadruple what INS is doing, and if we are trying to do everything for everybody, we are not doing our own job very well.

I happen to agree with you, we ought not to have local and State governments pick up the responsibilities of the Federal Government. I have no disagreement with that.

But I am, frankly, getting tired of local and State governments telling us we are supposed to pick up their responsibility because their people don't want to be taxed any more.



Their people happen to be the same people who sent me to office, and I appreciate the comments you have made. I will be making the same comments myself.

But I think I would point out by virtue of the fact you would not want us to get rid of revenue sharing, that we all sort of suffer from the same malady, wanting someone else to take care of the challenges that we have.

My amendment to allow State and local governments to do what we are doing on the Federal level arises out of a belief that most of these people are working, first of all.

Second, that you would have a tremendous reaction in this country if a legalization program were predicated on the assumption this is to legalize these people so they can be eligible for all welfare benefits that are available for American citizens.

Third, if someone truly wants to come to this country for purposes of working in this country, they would not feel tremendously put upon by virtue of the fact that they don't have access to a general assistance program in the State of California that we give to our citizens because we have decided that is something we want to provide.

That doesn't mean we have to provide it to the rest of the world. In parts of my district, we have the rest of the world there. Florida has a lot of border, 8,000 miles, I think, by water. We have a lot of border by land. I think it is better to go by land than water. Particularly, if you go by the Rio Grande, you get your ankle wet which is about as bad as it gets, up to your knees. In some areas, you don't get wet at all when you come across the border.

What we are trying to do here is tell you this bill becomes too expensive. This bill—and I will guarantee you that—if it loses and we have no bill whatsoever, I would ask you, is the situation in your jurisdictions going to be better than with this bill that has some ability to reimburse you as opposed to the situation you find now.

Mr. DANA. Yes.

Mr. LUNGREN. I don't know if anybody truly knows what the cost is right now, even though we make estimates on our overall services. Because you can't tell who is here legally and who is here illegally.

Mr. DANA. They were counted in the census.

Mr. LUNGREN. They were counted, that's right. But the census could not determine who is legal and illegal.

Mr. DANA. That's correct. In Los Angeles County, I think they counted about 400,000.

Mr. LUNGREN. Some of our friends in other areas are saying that therefore gives us more benefits when we do a per capita program dispersement; we might have more members in Congress as a direct result of that. I don't know whether that is a fact.

All I am saying is we sympathize with what you are trying to do. We are trying to work something out.

I would say this about the bill we had. We sympathize so much for you. We threw in all three alternatives in our bill which is really not what is going to happen. We put in the 100 percent reimbursement subject to appropriation. I will tell you then we argued to the committee that subject to appropriation that 100 percent re-

imbursement didn't mean what it seemed to mean. That is the way we are going to base it.

Because if everybody thought they were putting 100 percent of what we are going to pass, we put in emergency public health and that sort of thing, and we also have a block grant, I would suspect you are not going to have all three because in some ways, they are redundant.

Many of us felt if you were allowed the ability to get rid of the eligibility on many of your welfare programs, we should protect you to the extent of emergency medical and public health.

The problem the administration has with that is in using language to come up with that, they are fearful that the program will so parallel in word form and process the medicare/medicaid program that some Federal judge will say, "Aha, you are denying people institutionally." That is why the administration believes it would be better to have a block grant approach.

We could argue with the number. Maybe we could give them up or something. Because then it would allow the States and communities to devise whatever programs they want for the emergency medical and for the public health. That is their thought. That is why we have all three perhaps in one.

I intended to ask a question, but ended up making a statement.

Mr. KRAUSKOPFH. If I can make a brief comment, we are not trying to load up this bill with costs in such a way that it will cause the bill to go down. Too much work has been done, and it is too important for this bill to get through. I don't think looking at refugee dependency rates is a fair way to look at what may happen.

We know that the refugee dependency rates are higher than they are going to be for legalized aliens under this bill. We don't know what they would be for those people who would be legalized, but they certainly would be lower than what they have been for refugees.

All we are asking is that the Federal Government share with us whatever the risk is and go along with us on it and don't leave us at the receiving end of it.

Mr. COFFEY. Last year when this whole issue came up, we looked at it from the counter perspective, looking at the CBO numbers and looking at the administration numbers. We found the CBO and administration numbers substantially higher than what we thought the estimate of the cost would be.

So I think that just reinforces what Jack is saying. We are not in this to load it up or cause problems with the bill. We think the 100 percent reimbursement is the right approach and that we can come to some understanding in the appropriations processes as to what the right number is.

Mr. MAZZOLI. Thank you, gentlemen, very much. We appreciate your attendance and participation.

It has been a long day, but I think, Mr. Krauskopfh, you had said something in your statement about having listened to the earlier testimony. Many of our witnesses who get here early and listen are amazed at the variety of opinions and the difficulties that we are facing.

I think it is an education, not just for our committee, but really an education of the room and of the people who have come to testify to see the variety and profound differences between and among people.

But we really thank you very much and look forward to working with you.

Our last group for today and to wrap up our hearings, Mr. Robert Searby.

Before my friend from Long Beach has to leave, but just while we are still on the record, I want to thank him publicly for all the long hours he has devoted to this effort.

Just as a matter of fact, and just for the record, we have had 72 witnesses, counting today's witnesses, and 26 hours of hearings. So I want to thank you for being here for all that and thank all of the members of our subcommittee. Everybody has made a big contribution.

Mr. Searby, Deputy Under Secretary for International Labor Affairs, Department of Labor.

Mr. A. James Barnes, general counsel, Department of Agriculture.

Welcome, both of you. We have seen you on two or three occasions, but again welcome.

You will each have 5 minutes, then we will bring points out in questions.

Mr. Searby is listed first on our chart so please proceed, Mr. Searby.

#### **TESTIMONY OF ROBERT SEARBY, DEPUTY UNDER SECRETARY FOR INTERNATIONAL LABOR AFFAIRS, DEPARTMENT OF LABOR**

Mr. SEARBY. Thank you, Mr. Chairman.

I welcome the opportunity to testify on the labor-related aspects of H.R. 1510. Like many others, we welcome the continuing efforts of the committee to attempt to come to a reform of our immigration law.

Once again, the building blocks of your bill strongly supported by this Department are amendments to the Immigration and Nationality Act that would prohibit the knowing employment of aliens without work authorization, provide employers with a mechanism for determining the work eligibility of all job applicants, and establish a legalization program as the only practical and humane means of dealing with the current illegal population.

Illegal immigration is principally the result of international disparities in wages and employment opportunities. Thus, effective control of our borders requires controls over access to our labor market. The Department of Labor therefore strongly supports employer sanctions.

We believe that this proposed amendment would be a critical step toward improving the employment opportunities, wages, and working conditions of our most vulnerable workers—the low-skilled American and legal immigrant workers—with whom undocumented workers most often compete.

While it is impossible to quantify the precise impact of this additional supply of undocumented alien workers on similarly em-



ployed U.S. workers, the laws of supply and demand dictate the direction of those efforts. Illegal immigration, because it constitutes an increase in the supply of low-skill workers, depresses the wages and working conditions of low-skilled workers in this country and reduces their employment opportunities.

It is also important to recognize that the claim that undocumented aliens are employed only in jobs that Americans will not take cannot be sustained. In 1982, close to 30 percent of all workers employed in this country—some 29 million people—were holding down the kinds of low-skilled industrial, service, and agricultural jobs in which undocumented aliens typically find employment.

Nor can it be claimed that Americans will not take low-wage jobs. In 1981, an estimated 10.5 million workers were employed at or below the minimum wage. An estimated 10 million more were employed in jobs earning within 30 to 40 cents more per hour than the minimum wage.

If one illegal immigrant in five is performing a job that would be filled by an unemployed U.S. worker in the absence of illegal immigration—a conservative estimate—then 500,000 new undocumented workers entering the labor force annually will increase unemployment by 100,000 each year.

On the matter of labor certification for immigrants, as we stated in our testimony before the 97th Congress, the Department strongly supports the administration's amendment to sections 121(a)(14) of the INA which would streamline the current cumbersome and time-consuming labor certification procedures for immigrants seeking admission for permanent employment.

On the question of miscellaneous immigrant provisions, the Department opposes the change that would be made by this bill. We object to this provision because it would confuse the people who are here as third or sixth preference aliens with people who are here for temporary employment.

The Department of Labor currently operates the numerically unrestricted H<sup>2</sup> labor certification program through the provisions of section 101(a)(15)(H)(ii). And section 214(c) of the INA and INS deal with regulations issued thereunder.

Those sections of the INA restrict such nonimmigrants to aliens who are coming temporarily to the United States to fill temporary jobs if unemployed persons capable of performing such service or labor cannot be found in this country.

Section 214(c) of the INA grants responsibility for decisions regarding the importation of such workers to the Attorney General and directs him to consult with appropriate agencies of the Government prior to a determination on the petition of an importing employer.

Pursuant to INS regulations, DOL issues an advisory opinion, commonly known as a labor certification, on, one, the availability of U.S. workers for temporary jobs offered to aliens and, second, whether the terms and conditions attached to such job offers would adversely affect the wages and working conditions of similarly employed U.S. workers.

This Department administers the H<sup>2</sup> labor certification program through the regulatory process. The Department has promulgated a separate set of regulations for labor certification procedures for



agricultural and logging workers and for temporary nonagricultural workers.

Section 211 of the bill would amend INA provisions relating to the importation of H<sup>2</sup> workers.

The administration believes that its substitute H<sup>2</sup> provision, submitted on May 6, 1982, aimed at a reasonable balance between the interests of U.S. workers and the legitimate needs of agricultural workers. In particular, the administration's proposed H<sup>2</sup> amendments would codify this Department's current regulatory authority for the H<sup>2</sup> labor certification program while balancing that codification with the retention of the Attorney General's final statutory authority over the importation of H<sup>2</sup> nonimmigrant workers and provision of a new statutory consultative role for the Secretary of Agriculture regarding the issuance of H<sup>2</sup> certification regulations for agricultural employment.

Further, while the administration recognizes that some employers have legitimate needs for the temporary services of nonimmigrant alien labor, particularly in the event that future flows of undocumented workers are curbed through the enactment of employer sanctions, we also believe that it is imperative that we continue to provide basic protection to the U.S. work force which may be adversely affected.

We believe that U.S. citizen and legal immigrant workers should be employed whenever possible, and that American employers should be required to offer jobs to qualified workers in the United States before being allowed to recruit aliens abroad.

That is, we believe that any temporary alien-worker program must have safeguards that protect U.S. labor standards and prevent the displacement of U.S. workers. The administration's substitute H<sup>2</sup> provision would therefore condition any labor certification for H<sup>2</sup> nonimmigrant workers upon a determination by the Secretary of Labor that, one, there are sufficient qualified workers available to perform the labor or services involved in an employer's petition for temporary alien workers, and, two, the employment of aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

Mr. MAZZOLI. Mr. Searby, I hate to interrupt you or bother you, but in order to try to get on—and we are at around 1:30—maybe if you might summarize the major points, and then we could get to Mr. Barnes and try to get some questions. Because some of the areas you are talking about, I was going to ask a question about.

So maybe if you could summarize in 1 minute or so just the general position of the Department.

Mr. SEARBY. The main points here would be the question of duration of stay in the United States and the question of recruitment period in the United States. Those would be our two primary concerns.

Mr. MAZZOLI. Fine. Thank you very much.

[The complete statement follows:]

STATEMENT OF ROBERT W. SEARBY  
DEPUTY UNDER SECRETARY  
FOR INTERNATIONAL LABOR AFFAIRS  
U.S. DEPARTMENT OF LABOR  
BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES,  
AND INTERNATIONAL LAW  
COMMITTEE ON THE JUDICIARY  
UNITED STATES HOUSE OF REPRESENTATIVES

March 16, 1983

Mr. Chairman and Members of the Subcommittee:

I welcome the opportunity to testify today regarding the labor-related aspects of H.R. 1510, the Immigration Reform and Control Act of 1983. I applaud your continuing efforts to achieve the pressing and long overdue reform of our immigration laws, which is critical to any effective reduction of the increasingly large flow of undocumented aliens into our nation and our labor market.

As we have all discovered, illegal immigration is a complex and troubling issue which touches, directly or indirectly, the lives of many individuals and the welfare of many interest groups, both at home and abroad. Your efforts reflect a keen understanding of the importance and complexity of this issue, and a sensitivity to the wide-ranging implications of your proposals. Both merit the respect and admiration of all of us who are involved in immigration policy.

Employer Sanctions

Once again, the basic building blocks of your bill, strongly

supported by this Department, are amendments to the Immigration and Nationality Act (INA) that would prohibit the knowing employment of aliens without work authorization, provide employers with a mechanism for determining the work eligibility of all job applicants, and establish a legalization program as the only practical and humane means of dealing with the current illegal population.

Additional controls over the entry of foreign nationals into our labor market are necessary because illegal immigration has clearly been increasing. During the past decade, for example, Immigration and Naturalization Service (INS) apprehensions of deportable aliens increased by more than 300 percent. An estimated 0.5 million more come each year. Most enter the U.S. labor market and find employment in low-level jobs, where even the minimum wage is up to 10 times more than the wage available to them in their homelands.

Illegal immigration is principally the result of international disparities in wages and employment opportunities. Thus, effective control of our borders requires controls over access to our labor market. The Department of Labor therefore strongly supports employer sanctions. We believe that this proposed amendment to the INA would be a critical step toward improving the employment opportunities, wages, and working conditions of our most vulnerable workers--the low-skilled

American and legal immigrant workers, with whom undocumented workers most often compete.

While it is impossible to quantify the precise impact of this additional supply of undocumented alien workers on similarly employed U.S. workers, the laws of supply and demand dictate the direction of those effects. Illegal immigration, because it constitutes an increase in the supply of low-skill workers, depresses the wages and working conditions of low-skilled workers in this country, and reduces their employment opportunities. In a cautious calculation of the labor-market impact of illegal immigration, labor economist Michael Wachter has suggested a 20 to 30 percent displacement effect. This does not include displacement of U.S. workers who leave the labor force entirely and therefore do not count as unemployed. According to Wachter, this latter group could be about the same size as the displaced unemployed, or another 20 to 30 percent of the size of the undocumented alien workforce. Since Wachter's analysis assumes a situation of full employment, the displacement effects of continuing illegal immigration are likely to be even more dramatic in a situation of high unemployment..

It is also important to recognize that the claim that undocumented aliens are employed only in jobs that Americans



will not take cannot be sustained. In 1982, close to 30 percent of all workers employed in this country--some 29 million people--were holding down the kinds of low-skilled industrial, service, and agricultural jobs in which undocumented aliens typically find employment (see attached table). Nor can it be claimed that Americans will not take low-wage jobs. In 1981, an estimated 10.5 million workers were employed at or below the minimum wage (\$3.35 an hour). An estimated 10 million more were employed in jobs earning within 30-40 cents more per hour than the minimum wage.

The U.S. workers with whom illegals compete are demonstrably also our most vulnerable workers. The unemployment rate of blue-collar workers in 1982 was nearly three times that of white-collar workers: 14.2 percent, as compared with 4.9 percent. The unemployment rates of unskilled blue-collar workers--for example, nonfarm laborers--have been especially high: 18.5 percent in 1982. In addition, as we all know, the unemployment rates of young workers, blacks and Hispanics, many of whom are low-skilled, have been conspicuously high during recent years. Unemployment rates for teenagers last month were 19.7 percent for whites; 30.2 percent, for Hispanics; and 45.4 percent for blacks.

Finally, depressed wages and lost employment opportunities not only harm already vulnerable low-skill and low-wage U.S.

workers, they also are very costly to the Federal government. Each percentage point of unemployment costs the Government \$28 billion--\$7 billion in increased outlays; \$21 billion in decreased revenues. If one illegal immigrant in five is performing a job that would be filled by an unemployed U.S. worker in the absence of illegal immigration (a conservative estimate), then 500,000 new undocumented workers entering the labor force annually will increase unemployment by 100,000 each year. At the estimated rate of outlay, continuing illegal immigration costs the Government an additional \$0.7 billion per year, or a total of \$2.8 billion between fiscal years 1983 and 1986.

#### Labor Certification for Immigrants

As we stated in testimony before the 97th Congress, the Department strongly supports the amendment to section 212(a)(14) of the INA, which would streamline the current cumbersome and time-consuming labor certification procedures for immigrants seeking admission for permanent employment.

The labor certification provision has two basic functions: first, to protect the U.S. labor force from competition from alien labor; and second, to allow for entry of needed workers in the United States.

Section 201 of the bill would require the Secretary of Labor to make a determination that (1) there are not sufficient

qualified workers (or equally qualified workers in the case of aliens (a) who are members of the teaching profession, (b) who have exceptional ability in the sciences or arts, or (c) who have doctoral degrees and are seeking to enter the United States to be employed as researchers at colleges, universities, or other nonprofit educational or research institutions) available in the United States in the occupations in which the aliens will be employed, (2) sufficient workers in the United States could not within a reasonable time be trained for such occupations, and (3) the employment of aliens in such occupations will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The bill would permit the Secretary of Labor to make such determinations on the basis of labor-market information, without reference to the specific job opportunity for which certification is requested. While provision for individual case determination would remain, the Department would no longer be required to recruit, nor require employers to recruit, workers for a particular job in order to test the availability of workers in the United States.

This section also explicitly provides for the use of labor-market information with, as well as without, reference

to the specific job opportunity for which certification is sought. The Department supports such a change.

The Administration and the Senate have not included the proposed application of the special standard, "equally qualified," to members of the teaching profession and researchers with doctoral degrees. This special standard of availability enables nonprofit educational institutions to petition for the admission of "more qualified" aliens, even if qualified U.S. teachers or Ph.D. researchers are available. We would note that H.R. 1510 includes such a standard.

#### Miscellaneous Immigrant Provision

Section 203 of the bill would provide that aliens in the United States on October 1, 1982, who had at that date labor certification and an approved petition as a third or sixth preference alien and for whom the Attorney General estimates an immigrant visa will become available before October 1, 1984, may be classified as a nonimmigrant H-2 worker until October 1, 1984. The Department of Labor objects to this provision. Although all aliens seeking admission as third and sixth preference immigrants and as H-2 nonimmigrants receive labor certification from the Department, the former are certifiable and admissible only in permanent, and the latter only in temporary, jobs.



The provision thus confuses the distinction between the two separate categories of certifications. This Department therefore believes that classification of these prospective third or sixth preference immigrant workers as nonimmigrant H-2s would be highly inappropriate. We would note that past experience with the Virgin Islands immigrant and nonimmigrant programs demonstrates the potential for abuse of such a merger.

#### The H-2 Program

The Department of Labor (DOL) currently operates the numerically unrestricted H-2 labor certification program through the provisions of section 101(a)(15)(H)(ii) and section 214(c) of the INA, and the INS and DOL regulations issued thereunder. Section 101(a)(15)(H)(ii) of the INA restricts such nonimmigrants to aliens who are coming temporarily to the United States to fill temporary jobs if unemployed persons capable of performing such service or labor cannot be found in this country. Section 214(c) of the INA grants responsibility for decisions regarding the importation of such workers to the Attorney General, and directs him to consult with appropriate agencies of the Government prior to a determination on the petition of an importing employer. Pursuant to INS regulations, DOL issues an advisory opinion, commonly known as a labor certification, on (1) the availability of U.S. workers for temporary jobs offered to aliens, and (2) whether the terms and conditions attached to such job offers

would adversely affect the wages and working conditions of similarly employed U.S. workers. This Department administers the H-2 labor certification program through the regulatory process. The Department has promulgated a separate set of regulations for labor certification procedures for agricultural and logging workers and for temporary non-agricultural workers.

Section 211 of the bill would amend INA provisions relating to the importation of H-2 workers. This proposed codification of the H-2 labor certification program for nonimmigrant farmworkers proved to be both technically complex and controversial. We count at least seven permutations of the original Simpson/Mazzoli H-2 provision, including one submitted last spring by the Administration, as an alternative to its earlier proposed experimental guestworker program.

The Administration believes that its substitute H-2 provision, submitted on May 6, 1982, aimed at a reasonable balance between the interests of U.S. workers and the legitimate needs of agricultural employers. In particular, the Administration's proposed H-2 amendments would codify this Department's current regulatory authority for the H-2 labor certification program, while balancing that codification with retention of the Attorney General's final statutory authority over the importation of H-2 nonimmigrant workers and provision of a new statutory consultative role for the Secretary of Agriculture regarding the

issuance of H-2 certification regulations for agricultural employment.

Further, while the Administration recognizes that some employers have legitimate needs for the temporary services of nonimmigrant alien labor, particularly in the event that future flows of undocumented workers are curbed through the enactment of employer sanctions, we also believe that it is imperative that we continue to provide basic protection to the U.S. work force, which may be adversely affected by alien labor competition. We believe that U.S. citizen and legal immigrant workers should be employed whenever possible, and that American employers should be required to offer jobs to qualified workers in the United States before being allowed to recruit aliens abroad.

That is, we believe that any temporary alien worker program must have safeguards that protect U.S. labor standards and prevent the displacement of U.S. workers. The Administration's substitute H-2 provision would therefore condition any labor certification for H-2 nonimmigrant workers upon a determination by the Secretary of Labor that (1) there are not sufficient qualified workers available to perform the labor or services involved in an employer's petition for temporary alien workers, and (2) the employment of aliens in such labor or services will not adversely affect the wages and working conditions of workers in the United States who are similarly employed.

The Administration's substitute H-2 provision would also limit the time period for nonimmigrant H-2 workers to remain in the U.S. for a period of not longer than eight months in any given calendar year, except for those occupations which the Secretary of Labor has previously recognized required a longer duration of stay. While H.R. 1510 is silent on the issue of an H-2 worker's duration of stay in this country, we believe that this eight-month limitation is a critical immigration control provision. The longer that nonimmigrant alien workers are permitted to stay, the more likely they are to be attracted to unauthorized employment and to press for the admission of their spouse and children or to form families in their country of employment. This increases the potential for both illegal immigration and backdoor immigration.

The technical complexity of section 211 of H.R. 1510 precludes a provision-by-provision comparative analysis today. In general, however, the Administration believes that its substitute H-2 amendments provided a number of technical clarifications and sought to strike a balance between the potentially conflicting interests of U.S. growers and U.S. farmworkers by ensuring the former statutory access to aliens for temporary farmwork while also ensuring the latter statutory protections from alien competition. Despite our concerted effort to achieve a compromise H-2 provision, however, consensus has not yet been forthcoming.



The Administration is deeply committed to enactment of measures to control illegal immigration. As we stated earlier, we believe employer sanctions are an essential factor in protecting our many low-skilled citizen and immigrant workers from the adverse effects of continuing illegal immigration. We therefore have a strong interest in an H-2 provision that can facilitate enactment of immigration control measures while also safeguarding U.S. workers' employment standards and job opportunities. Fortunately, we believe that the collection of H-2 substitute amendments generated during the last Congress not only signalled the contentiousness of this issue, it also illuminated the debate. In our view, while there has been much polarization, there has also been considerable progress. The numerous drafting exercises have clarified many of the specific issues raised by a codification of the H-2 agricultural program. Clearly, we are all far more knowledgeable about the complexities of the H-2 program, and their implications for the future, if sanctions are enacted, than we once were.

Though each of these H-2 amendments calls for full and careful analysis by all interested parties, it is our firm view that such analysis will facilitate rather than retard resolution of this issue. We would be happy to work with the Congress in undertaking such an analysis, and in working towards a consensus H-2 provision that will assist in the much-needed passage of an immigration reform bill.

Student Waiver

The Department generally supports the Judiciary Committee amendments to section 212 of H.R. 1510, which provide that the Attorney General may waive the two-year foreign residence requirement, if he deems it in the national interest, for certain foreign students in the U.S. Specifically, he may waive the requirement for an F-1 student with a U.S. degree in a natural science, mathematics, computer science, or engineering, who is applying for an immigrant visa and has either a college or university teaching offer in his degree field, or a research or technical job offer in his field; or who is applying for a nonimmigrant trainee visa, and will not receive more than three years of training by a U.S. firm.

Because those students seeking immigrant status would be admitted under the preference system, a labor certification would be required. The Department supports the labor market protection provided by these requirements. The purpose of the student waiver provision is to enable U.S. colleges, universities and high-technology industries to recruit and retain highly qualified foreign nationals to fill critical teaching, research, and technical management positions in those fields. In our view, this purpose is served, without cost to the welfare of workers in this country, if labor certification is required and if the waiver is made applicable only to individuals with

advanced degrees in those fields, to ensure that such waivers are available only to highly trained foreign students with the requisite skills.

Thank you, Mr. Chairman. This concludes my prepared remarks. I would be pleased to answer any questions you may have.

Low - Skilled Occupations  
Held By U.S. Workers in 1982

<u>Category</u>	<u>Employment</u>	<u>Median Hourly Wage</u>
Operatives-Nontransport	9,429,000	\$6.05
Nonfarm Laborers	4,518,000	5.22
Farm Laborers	987,000	3.87
Private Household Workers	1,042,000	3.13
Other Service Workers	<u>12,694,000</u>	3.94
 TOTAL	 28,670,000	

Source: USDOL, Bureau of Labor Statistics (BLS), Employment and Earnings, January 1983, Table 23; and USDOL, BLS, unpublished tabulations from the Current Population Survey, Fourth Quarter, 1982.

Mr. MAZZOLI. Again, I am sorry. Because again, you are so broad and so encompassing. To try to do it in 5 minutes is practically impossible. But even with the 5-minute rule, we have had 26 hours over the last 3 weeks.

So it is amazing how much we have got into.

Mr. Barnes, you are recognized, and welcome.

**TESTIMONY OF A. JAMES BARNES, GENERAL COUNSEL, DEPARTMENT OF AGRICULTURE; ACCOMPANIED BY AARON BODIN AND MARION HOUSTOUN**

Mr. BARNES. Thank you very much, Mr. Chairman.

Again, I express the Department's appreciation for your including us in the discussions on this important national issue.

You are already familiar with the case that we believe there is to be made for providing some sort of a safety valve in the agricultural areas as we move toward trying to have all sectors of our economy use a legal work force, as opposed to an illegal work force as is sometimes happening now, particularly in some of the temporary employment.

What I would like to do is briefly indicate that we continue to believe that an H<sup>2</sup> type program is an appropriate vehicle to provide this safety valve. We are very pleased that you have again decided to include an H<sup>2</sup> type program within H.R. 1510. As you shape section 211 of that bill in subcommittee, we hope, first, that you will give us a temporary agricultural worker program that is a reasonable balance of the competing interests of the U.S. labor force, of the agricultural producers, and of the interests of the foreign workers that will be here.

Second, that it would be a program that would be flexible, that it would be workable, so that it is a vehicle that would be used, as opposed to one that would be ignored, and hopefully one that would be adaptable to the different kinds of agricultural needs that are found in different parts of the country, including some that are now not making much use of the H<sup>2</sup> program.

Third, I would hope that the program would have a mechanism for assuring that the various competing interests have a chance to effectively participate in developing the program, in administering the program, and along this line, as Mr. Searby has indicated, that it would include a role for the Department of Agriculture.

Again, as the Department of Labor has indicated, we believe that the administration's H<sup>2</sup> amendments that we suggested last year reflected a reasonable compromise of the competing interests in this very controversial area. We recognize that the committee has some different ideas and we have some different ideas, but we would certainly like to work with you as you go into markup to try to develop a bill that has appropriate balance.

Mr. MAZZOLI. Thank you very much. Thank you very much, Mr. Barnes.

I appreciate your cooperation on the time. Very, very nice cooperation.

[The complete statement follows:]



STATEMENT OF  
A. JAMES BARNES  
GENERAL COUNSEL  
UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION, REFUGEES AND INTERNATIONAL LAW  
HOUSE COMMITTEE ON THE JUDICIARY  
CONCERNING  
THE IMMIGRATION REFORM AND CONTROL ACT OF 1983

March 16, 1983

Chairman Mazzoli and Members of the Subcommittee, I appreciate the opportunity to appear today on behalf of the Department of Agriculture to discuss with you this issue of national concern. I will, of course, be directing my comments to certain of the issues addressed in H.R. 1510, the Immigration Reform and Control Act of 1983. Before addressing the bill, I would like to make a few observations to help put our comments in perspective.

In the agricultural sector, there is both an awareness of the serious immigration control problem we face and an understanding of the need to take corrective action. Agricultural employers generally support return to a rule of law and to regaining control over our nation's borders. At the same time, there is a consistently expressed concern that the government allow an adequate, timely, legal supply of labor for agriculture by providing a mechanism for the use of alien labor on a temporary basis if qualified domestic workers are not available and the use of such aliens will not adversely affect U.S. workers.

For a number of reasons, we share this concern. As a matter of fundamental fairness, if it will be illegal to hire undocumented workers, then access to a legal workforce should be provided when needed. At the same time, failure to provide access to an adequate legal workforce

would doubtless result in continued use of undocumented workers, which would undermine our overall objective of improved immigration control. Furthermore, failure to provide access to an adequate legal workforce could result in loss of production of some crops to other countries, reducing the nation's self-sufficiency in fresh fruit and vegetable food production and the positive contribution agriculture makes to our balance of payments.

There are currently an estimated 300,000 - 500,000 undocumented aliens who work each year on our nation's farms and ranches. They are primarily engaged in seasonal harvest work in the Southwest and along the West Coast. From World War II until 1964, this area relied on the "Bracero" program to provide much of its seasonal labor supply. When that program ended, the area turned to using illegal aliens to help fill its seasonal labor needs. Thus, as an immigration control program is implemented, the greatest potential for dislocation of agricultural production and the greatest need for access to a legal workforce to replace the current illegal workforce, is in the Southwest and along the West Coast. However, over the past year agricultural employers in other parts of the country have discovered that some employees they thought were legal aliens, were in fact illegally here.

We were pleased that the bill (S. 2222) passed last year by the Senate, as well as H.R. 7357 which the House was debating at the time it adjourned, explicitly recognized that need by providing a statutory basis for a temporary agricultural H-2 worker program. Similarly, we were pleased to note that such a program is also included in H.R. 1510. As we have previously testified, we believe that a streamlined H-2

temporary agriculture worker program is a responsible, targeted vehicle for helping assure access to an adequate, timely legal supply of labor to agriculture, that at the same time protects the legitimate interests of the domestic workforce. In fact the administration submitted a substitute H-2 program which we continue to support.

The present "H-2" program is, of course, defined and established almost entirely by regulations of the Immigration and Naturalization Service and the Department of Labor. These regulations are based on clause (H)(ii) of section 101(a)(15) of the Immigration and Nationality Act, which defines an H-2 worker as a nonimmigrant alien resident of a foreign country who comes temporarily to the United States to perform temporary services or labor if unemployed persons capable of performing such service or labor are not available. Section 211 of the bill would, to some extent, codify portions of the H-2 program now contained in the regulations.

The current H-2 program is working fairly well although we believe some changes in it are desirable. However, as we try to assess its possible use on a broader scale in other parts of the country, notably the Southwest and West Coast, it is critical to note a number of significant differences between the agricultural labor situation there and on the East Coast. There maybe a much greater need in the West for flexibility for workers to move from one farm to another, or from one crop to another, to meet the changing labor needs than is true in the East. Moreover, larger numbers of H-2 workers might be involved in the West. Some 12,000 H-2 workers are now admitted to fill some 18,000 jobs in agriculture primarily on the East Coast, while the need could be significantly larger in the Southwest and West Coast regions.

As indicated in the Attorney General's testimony, the Administration supports a statutory authorization of an H-2 temporary worker program. We believe it provides a reasonable basis for protecting the interests of American workers, our agricultural sector, and the rights and welfare of foreign workers. H.R. 1510 should provide that the program be developed and administered in a manner that will assure that the various competing interests would be fully heard and, to the extent possible, accommodated in a manner consistent with the national interest.

We would be happy to work with the committee to develop the legislation necessary to implement such a program.

As I conclude, I would of course be happy to respond to any questions the committee may have.

Mr. MAZZOLI. Let me yield myself a few minutes to get started. I am delighted to see in your statement, Mr. Searby, the computations on pages 4 and 5 where you try to reach some kind of a figure to show what we are now as a nation bearing by way of cost as a result of the presence in our labor force of undocumented workers.

I think we agree there is not a one-to-one displacement, but substantial displacement. You do try to quantify that, which is very helpful. I think it would be very useful to us as we try to argue with our colleagues the point that doing nothing is not a solution either, because doing nothing is costing us substantial sums of money.

So I thank you for that.

You heard perhaps this morning—if not, I can tell you—there has been two or three different witnesses over our hearings who have said that using national labor market data alone is not enough; that there ought to be some opportunity for individual surveys.

Do you see it that way that there ought to be some opportunity for an employer to come in and say, "OK, there are plenty of engineers in this nation nationally, but I need an aerospace engineer with a specialty in fixed wing, and, therefore, I want you to advertise that within Louisville, Ky. region because I don't think you are going to find one there and that's where this person wants to locate?"

Do you see that as a need to have some alternative?

Mr. SEARBY. Are we discussing labor certification for immigrants?

Mr. MAZZOLI. Immigrants.

Mr. SEARBY. What the administration is advocating is the ability to use general labor market data on this. However, we still want to insure as INA now calls for a case-by-case examination.



Mr. MAZZOLI. So that your position is that isn't abolished. The current law doesn't allow you to use national, it only allows you to go case by case; is that correct?

Mr. SEARBY. Yes.

Mr. MAZZOLI. So you want to have available the national labor market data?

Mr. SEARBY. What it does is gives us flexibility and permits us to use that, permits us to use specific case by case. You could even permit recruitment if that is necessary. So the Department of Labor has several ways of doing so from general data on down.

Mr. MAZZOLI. If I were a perspective employer and I have got a job for a computer engineer, and I come in and ask for a labor certification, as a technical matter, do you now, since you don't have national data, send notices out to your offices around the country to see if there is a computer engineer anywhere?

Mr. SEARBY. Yes; one of the representatives of the certification staff is here.

Mr. MAZZOLI. I would like you to identify yourself.

Mr. BODIN. I am Aaron Bodin, U.S. Employment Service in the Department of Labor.

Mr. MAZZOLI. Do you promulgate that notice around the country? What really happens?

Mr. BODIN. We might if it is a job for which there is a national labor market. Yes, we would circulate it. Employees would be required to recruit nationally.

Mr. MAZZOLI. If I am an employer and I come in and say, "Look, I need an engineer, and there is a guy in England, and I have looked around for an engineer in Louisville, Kentucky, and I can't seem to find one, I would like to get this guy."

What do you say? Do you say, "I'm sorry because on our data"—do you look at a sheet and say there are plenty of engineers?

Mr. BODIN. No; we cannot do that under the current law. The current law requires a finding that there are not sufficient qualified, willing and able U.S. workers. The courts have told us that in order to make that finding, we have to determine whether or not workers who we think are available are willing.

Mr. MAZZOLI. So you can't refer to a sheet of paper that makes an array, but you have to actually sort of get the word around the country?

Mr. BODIN. We have to test the labor market.

Mr. MAZZOLI. How do you test that? Do you send a notice out to your offices around the country?

Mr. BODIN. The employer is required to test either in the newspaper or—

Mr. MAZZOLI. Does the employer come to you before he has done the testing or does he come in after he has done the testing?

Mr. BODIN. He can do both. If he has already recruited, he can come in and say, "I would like you to make a determination on my effort so far to find U.S. workers." If he has not, then we have certain prescribed recruitment procedures that he must follow.

Mr. MAZZOLI. For example, would you put an ad in the paper? What would you do?

Mr. BODIN. Put an ad in the newspaper or a journal if it is appropriate to the occupation. He must give a job order to the State Em-

ployment Security Agency which may or may not then circulate that nationally.

Mr. MAZZOLI. How much time does that take?

Mr. BODIN. Thirty days.

Mr. MAZZOLI. Thirty days?

Mr. BODIN. Yes.

Mr. MAZZOLI. If he doesn't get a taker in 30 days, he can come back; is that the idea?

Mr. BODIN. Yes; if there is no one available in 30 days, then the application is forwarded to the Labor Department for determination.

Mr. MAZZOLI. If he hasn't found anything what further determination is there?

Mr. BODIN. The recruitment and the processing happens at the same level. The determination must be made by a Federal Labor Department official.

Mr. MAZZOLI. What happens if somebody becomes available afterwards? Do you only consider the time the employer was looking? What happens if after all the papers have gone up some engineer walks in and says, "I want that job; I just read about it. I was in my dentist's office and read this magazine which had this ad in it. I want the job."

Mr. BODIN. That rarely happens. But if it did happen, the certifying officer would be bound to consider the availability of that person.

Mr. MAZZOLI. What happens? Whom does he call? The employer?

Mr. BODIN. No; the engineer would go to his local job service office in Seattle. They would communicate.

Mr. MAZZOLI. That's where he might have heard about the job?

Mr. BODIN. Yes; right.

Mr. MAZZOLI. So he says, "I think I am qualified."

What happens at that point? How do you marry the job with the person?

Mr. BODIN. The engineer would submit a résumé. It would reach the office serving the area of the employer.

Mr. MAZZOLI. If it is typical in the engineering profession to pay for the first interview, that employer may be required to pay for that person's transportation in for the interview?

Mr. BODIN. Yes.

Mr. MAZZOLI. Can you say that because nationally you don't have a labor shortage that there is no local labor shortage?

Mr. Barnes?

Mr. BARNES. Mr. Chairman, the intent of the H<sup>2</sup> amendment that was suggested by the administration was to delete the requirement that the search have to be to the four corners of the country; rather it was anticipated that the Labor Department would look not only to the local area, but to areas that traditionally furnish workers for that temporary employment.

For example, on the west coast, there frequently is a migration of people up from Arizona to California and on up to Oregon and Washington. That migrant stream may be a more fruitful source of workers than expecting somebody in Maine to go West to work for 3 weeks or 6 weeks and then be faced with a problem of going back to the east coast.

I think Bob Searby may want to comment further on this. We were striving within the administration for some sort of reasonable look, focusing the attention on the area that was most likely to produce the workers.

Mr. MAZZOLI. It seems more likely that an engineer, using our example, from Bangor, Maine, would go to Long Beach to take a job that an apple picker would go from the apple orchards in New York State out to work the San Joaquin Valley.

I wondered if these labor laws take that into consideration.

Mr. SEARBY. Certainly, Mr. Chairman, they are looking at traditional employment networks. There happens to be a distinction made between the types of nonagricultural skilled labor, specialized labor, that might be concentrated in areas and lowest skill, especially in time of high unemployment, where you have lowest skilled in virtually all the areas.

Also on the question of bringing skilled professionals—you have been referring to aerospace, engineers of that sort—the fact is that to get a foreigner, you have to make an international search. If you can make an international search using traditional employment network, certainly the Department of Labor feels that complies with making the national searches in those employment networks here in the United States.

Mr. MAZZOLI. Mr. Barnes, when DOL advertises to see if there are Americans who are willing and able to take agricultural jobs, do they currently go anywhere outside of the eastern seaboard or the Midwest? Do they actually even consider California or anyplace else in the country?

Mr. BARNES. I am not sure I am as well equipped to address that as someone who works on the H<sup>2</sup> program.

My understanding is some of the more major employers do send recruiters out to the traditional areas to look for temporary workers.

Mr. Mazzoli.

May I turn to you, sir?

Mr. BODIN. A determination would be made by the Department where workers may be likely to be found. The employer will be directed to recruit in those areas.

Mr. MAZZOLI. So for example, now, using the current H<sup>2</sup> program, since it is primarily an eastern seaboard and Southeast program, you don't really get much into the Northwest or the Southwest?

Mr. BODIN. No; we recognize the traditional movement of migrant workers.

Mr. MAZZOLI. Say that somehow people from the Southwest found out about these jobs coming up in Tampa or around Lake Okeechobee, and they call somebody. Does the employer or the Labor Department have to concern themselves with these people that are that far away?

Mr. BODIN. Yes.

Mr. MAZZOLI. If so, is their transportation paid? Are they on their own hook to get to where the job is by the due date? How does that happen?



Mr. BODIN. The employer would be required to pay their transportation if they were hired and worked for 50 percent of the contract period.

Mr. MAZZOLI. So in other words, they may have to stand their transportation there and will be reimbursed if they stay there for half the length of the contract?

Mr. BODIN. Yes; that's right. They would have to do that for U.S. workers as well as foreign workers.

Mr. MAZZOLI. U.S. workers; that is what I was thinking.

Well, it is an amazingly complex situation, but, of course, the effort that we are trying to do here is to draft an H<sup>2</sup> program and, of course, an immigrant labor certification program that recognizes the realities. The truth of the matter is there is a problem of people leaving and going great distances for jobs.

I mean, we have this need to look at national figures, and yet we recognize that we are probably not going to have but regional movement. It is hard to get people except in certain jobs to really traverse the Nation. So we tried to come up with something that recognized this.

Are there any questions?

Mr. MILLER. Just a couple, Mr. Chairman.

Some of the agriculture groups proposed a transitional program perhaps to get them over the hump of getting the growers into H<sup>2</sup> programs. Perhaps you could think about that rather than making comments right now.

The second question is that we had a lot of testimony last week about these foreign engineers. The subcommittee had both sides of the issue. Does the Department of Labor have any judgment on the dispute as to whether there really is a serious displacement by the foreign students of American engineers?

Mr. BODIN. I don't know.

Mr. SEARBY. Mr. Chairman, I don't know which cases specifically they are referring to. I have had discussions with the different American engineering groups and have learned a good deal about their employment patterns in the process, but I couldn't answer on the specific cases.

Mr. MILLER. You don't know on a summary judgment as to which side is right on that? Because we had the dispute coming from both sides.

Mr. SEARBY. My initial response would be to refer back to what I noted before which is when you have general figures about the availability of engineers in the United States and their wages and you know their unemployment levels and then you see employers can use international employment networks that would expect they could also use the national employment networks to the full extent.

Mr. MAZZOLI. Just basically speaking, do you agree or disagree, Mr. Barnes, that if the employer sanctions section of our bill work that certain sectors of the country in the area of agriculture would indeed find their labor supply in jeopardy?

Mr. BARNES. I think they probably would but I think the real question mark in the equation that none of us know the answer to is what the reach of legalization is going to be. How many people who are currently working in agriculture are going to be eligible



for legalization, are going to seek to apply, and are going to keep working in agriculture?

You can conceive of a scenario where you wouldn't have any significant problem, but many questions are being raised about how many people will come forward and seek legalization. That uncertainty leads us to feel we ought to have a safety valve.

Mr. MAZZOLI. Well, let me ask you just a couple questions here that staff indicated for the Department of Labor.

It would seem like perhaps our bill would strengthen your hand in enforcement of the Nation's labor laws because it does allow the Department of Labor to have access to certain employer records. Have you thought about that at all, Mr. Searby?

Mr. SEARBY. On the H<sup>2</sup> program?

Mr. MAZZOLI. Well, across the board in the employer sanction area as well.

Obviously, it hasn't been a major part of your scrutiny; I appreciate that.

For Mr. Bodin, earlier—I guess it was last week or the week before—Congressman Brown of Colorado brought to our attention a problem that he feels, and it has been reiterated by other members, and that is that people are frequently referred to growers by State and Federal employment agencies or referral agencies.

Under our bill, those referred people would still have to be verified by the employer. The suggestion is that those discussions and that winnowing process and scrutiny ought to take place, the examination ought to be done, at the State agency or the Federal agency.

How do you see that as working out in practice?

Mr. BODIN. I haven't had a chance to think about it.

Mr. MAZZOLI. Would you do that? I would appreciate it because you are the man who deals with this stuff day in and day out. I would like to know what is practical because it makes a lot of sense to me.

It seems if a person is referred to you by a Federal or State agency, you implicitly say that person is bonafide. It is perhaps unfair to have to reestablish that eligibility.

Mr. BODIN. The traditional function of the employment service is a job-matching agency for willing users. I think there would be a reluctance to enter into specific enforcement functions.

Mr. MAZZOLI. Except that that is exactly the argument people make about employer sanction, "You are looking to employers to do your job." And we say, not really; it is a cooperative effort, everybody is in this thing a little. Because otherwise, we have this increasing flood of people.

So just kind of think it out. When people come to you, how do they come. I mean, do they come ready with all the documents? Is that traditionally not the case?

Yes, Mr. Searby.

Mr. SEARBY. Mr. Chairman, I would just note on that the employer sanctions, you would have a duplicative process in law enforcement here because you would be noting that some employers some of the time would have to go through the identification procedure that is set up in this bill and that the others would not.

In fact, the same employer for some employees might have to do it, might not at other times. That would be the employment services job. Whether it is agriculture or not agriculture is across the spectrum of employment.

What this would do is simply require that at the place of employment, the identification procedure be followed by everybody, by all employers.

Mr. MAZZOLI. Well, it is true. As I say, I would like to just hear some observations you have because it does seem that typically the employers call in a group from a contact with a State employment agency and some show up, and that is just the way the thing is operated.

Whether in practice it would work out to say that people referred to you not by private recruitment, but State and Federal agency, are legitimately able to work. You don't have to do any further checking. If the INS finds those guys are illegal, then they take it up with the State agency or the Federal Government or something else, but not with that employer.

But anyway, this is the end of the 7th day of our hearings, and I just again want to thank you three gentlemen and all of the people who appeared before us these past 7 days and my colleagues and staff for their attention.

And at this point, our subcommittee stands adjourned.

[Whereupon, at 2:03 p.m., the subcommittee hearing was adjourned.]

## ADDITIONAL MATERIAL

Statement of Congressman Geo. W. Crockett, Jr.  
for inclusion in the hearing record  
on the Immigration Control and Reform Act (H.R. 1510)

MR. CHAIRMAN, As the Subcommittee again takes up the Immigration Control and Reform Act, I would like to share with my colleagues some of my continuing concerns with this legislation. These concerns, which I brought up during our consideration of the Immigration legislation in the last Congress, include those sections of the bill dealing with asylum adjudication, employer sanctions, and the legalization of aliens now in the United States.

For the benefit of my colleagues, I would like to insert at this point in the hearing record the Statement for the Record of Randall Robinson, Executive Director of TransAfrica, on this legislation. The testimony offered by Mr. Robinson clearly and succinctly addresses my concerns, and I associate myself with its position:

(testimony attached)

STATEMENT  
FOR THE RECORD  
OF  
RANDALL ROBINSON  
EXECUTIVE DIRECTOR  
OF  
TRANSAFRICA  
ON  
THE IMMIGRATION CONTROL AND REFORM ACT OF 1983 (HR1510)  
March 1983



As the black American lobby for Africa and the Caribbean, TransAfrica has a special interest in the ongoing attempts to reform existing legislation on immigration and refugees.

These most sweeping legislative efforts have engendered impassioned responses from diverse segments of U.S. society. This is due in large part to the significance of the proposed legislative changes, not only to would-be immigrants and refugees, but generally to U.S. citizens as well.

The millions of undocumented workers currently spread across the United States, the backlog of asylum cases within the Immigration and Naturalization Service (INS), plus the political refugees who continue to turn to this country in desperation, underscore the importance of our developing legislation which is comprehensive in scope, fair in its intent, and consistent in its application.

The Immigration Control and Reform Act of 1983 (HR 1510) is a bold and laudable step toward the solution of a complex and emotionally charged problem. The House version of the Bill now incorporates provisions which quell concerns raised both by earlier versions put forward by this body as well as the current version proposed by the Senate (S529). There remain however, key provisions in dire need of re-assessment and modification if this legislation aims to uphold our fundamental traditions of due process, the provision of succor and refuge to those fleeing political persecution and brutality, and the protection of our citizenry from any form of discrimination based on race or national origin.

ASYLUM ADJUDICATION

Although there are significant points of departure between HR 1510 and S 529, they both unfortunately permit summary exclusion of aliens. Under this provision, aliens who do not have the documentation required to obtain entry to the United States or who fail to indicate an "intention to apply" for asylum under Section of 208 would be summarily excluded from entry into the United States without a hearing - this determination being subject to neither administrative or judicial review.

Further complicating the issue is the lack of clarity as to what constitutes an intention to apply for asylum. Do basic expressions of fear and concern for his/her safety on the part of an alien suffice, or is a more official, precise and technical statement required? In the absence of clear guidelines, personal interpretation on the part of the particular immigration official involved plays too great a role in what is often a matter of life and death for the political refugee.

Our opposition to the bill's summary exclusion provision is based on the fact that it is a major departure from the long-standing right of aliens arriving in the United States to present their case for admissibility or asylum before an immigration judge with legal representation. Equally significant is this provision's failure to recognize the extent to which language barriers, ignorance of US law and procedure, and paranoia born out of years of political repression can lead to excessive caution, inarticulateness, and a lack of assertion in dealing with all government officials - our own immigration officers included.

Of particular concern to TransAfrica is the plight of the Haitian refugees, who have by and large been treated as "economic" rather than political refugees, and have been victims of definite discrimination on the

part of Immigration and Naturalization Service officials. Both the language barrier as well as a general discomfort regarding the perceived co-operative relationship between this government and that from which they have fled combine to produce a marked reticence on the part of Haitian refugees. Investigations have also shown the Haitians to be generally unaware of the asylum provisions open to them. The maintenance of the summary exclusion provision of the bill would therefore, in light of the factors outlined above, render both Haitian as well as other political refugees, particularly and unnecessarily vulnerable.

The administrative costs associated with adequately reviewing asylum applications must be weighed against the implications of a political refugee being forced to return to a land recently fled for fear of political persecution and brutality.

We support the House bill's creation of a President-appointed, Senate-approved United States Immigration Board. Board members' six-year terms, we feel, increase the potential for Board action which is independent of the Administration responsible for appointing its members. The requirement that members select specially trained administrative law judges is a positive step towards the provision of fair and impartial asylum hearings and ensures greater expertise than has to date been displayed in the assessment of asylum cases.

One final comment on the issue of access to judicial review on the part of asylum applicants - HR 1510 denies access to federal district courts for the review of the lawfulness and constitutionality of INS processing of asylum claims, the proper and sole avenue being through federal circuit court of appeals. The low number (twelve) of asylum cases which have been heard in Federal Circuit Court of Appeals in the past two years however, suggests that many asylum applicants may not have the

resources or access to lawyers specializing in immigration law and refugee matters, and that access to Federal District Courts should also be maintained.

#### EMPLOYER SANCTIONS

TransAfrica opposes employer sanctions. Intended to control/eliminate the participation of undocumented aliens in the U.S. work force in order to reduce the appeal of illegal migration to the United States, employer sanctions have the potential to increase both the type and frequency of discrimination faced by visibly identifiable minorities.

Obligated, under threat of financial penalty, to ascertain the right of a job applicant to work in the United States, employer caution and suspicion would naturally be greatest when accents, color and/or race suggest a place of national origin other than the United States. This however, leaves many U.S. citizens and permanent residents open to unnecessary suspicion, with the result that visually identifiable minorities, both "legal and illegal", will find themselves being required to prove their right to work both on a more frequent, as well as a more thorough, basis than their counterparts of European descent.

In addition to this, since not only employers, but also the general public (including immigration officials) <sup>are</sup> ~~is~~ more likely to question whether a member of a visually identifiable minority is "documented", employers, out of a desire to avoid searches of their property for illegal aliens and the related disruption in productivity and business, may consciously reduce their minority staff, and therefore their exposure to such disruptions.

In view of the potentially discriminatory impact of this provision on U.S. citizens and legal residents, it is recommended that employer sanctions be deleted.



LEGALIZATION

The concept of amnesty for aliens who have been living and working in the United States is legally sound. However, both the two-tiered system as well as the related cut-off dates warrant re-assessment.

HR 1510 proposes permanent residence eligibility for illegal aliens ~~who~~ who have been residing in the United States from before January 1, 1977 and temporary resident status for those who have been here <sup>since</sup> before January 1, 1980. (An exception is made in the case of Haitians and Cubans, the cut-off for which is January 1, 1981).

These cut-offs will leave a sizable segment of the illegal alien population with no status, subject to exploitation by and exclusion from many segments of U.S. society. In an attempt to minimize<sup>2</sup> the extent of the remaining underground subculture therefore, it is recommended that all illegal aliens who have resided in the United States on a continuous basis<sup>4</sup> <sup>since</sup> before January 1, 1982 be granted eligibility for permanent resident status, and that the transitional temporary resident provision be deleted. A one-year period of grace in which to apply for permanent residence is recommended.

In closing however we trust that the Administrations's much-publicized and highly controversial program of prolonged mass detention of the Haitian boat people which began in May 1981, will receive the special consideration and review which it deserves.

STATEMENT OF  
 CONGRESSMAN SID MORRISON  
 IMMIGRATION REFORM AND CONTROL ACT

There is no question in my mind that new immigration policy is necessary. The hours of meetings and hearings I have attended convince me that something must be done because our borders are out of control, but I question that the bill before us provides enforceable or fair answers.

Not enforceable, because I doubt that employer sanctions will work. I understand that a General Accounting Office report questions the workability of employer sanctions as evidenced by a review of results in the 19 countries where such laws are in force.

The bill is not fair, because it will result in discrimination. And it's not fair to impose an additional maze of red tape on employers because government agencies have failed to halt the flow of illegal immigrants. It also forces an unworkable temporary worker program onto a number of comparatively small farm operations which have specialty, short-term harvests.

Other witnesses have expressed the concerns of the Hispanic community. On behalf of thousands of my constituents, I echo these sentiments. Perhaps the best use of my time, and yours, would be to concentrate on the areas in which I have many years of experience.

I refer to my 25 years as a farmer in Central Washington State. The crops grown there are diversified, but include many that are very labor intensive. Add the dimension of highly perishable products, with short, weather-dependent harvests, and you have a most difficult situation. The gamble in this type of farming is reflected in the fact that the average fruit grower in Washington State has fewer than 100 acres. The risk is so great that major corporations and conglomerates have refused to invest.

These same growers, most operating on small family farms, ask for no federal support subsidy. They also ask not to be made the enforcer of immigration policy. The specialty harvests to which I refer have always depended on temporary, short-term labor. Since the State of Washington is far removed from the normal migrant worker stream, agricultural wages in the Northwest are the highest, or among the highest, in the nation. For several decades, citizens from the great states of Oklahoma and Arkansas joined local workers in harvesting these crops. Now many of these former migrants own their own farms in the Northwest.

In recent years, Hispanic workers have increasingly filled this need for short-term specialty harvests. They have left field work and row crops, which have become mechanized, and filled the need created by the growth of the asparagus, cherry, pear, apple grape and hops industries. These Hispanic workers come from Texas and California, attracted by piece rates that reward their aggressive work habits. There is no argument that, since the termination of the Bracero program, this migrant stream has been joined by an unknown percentage of illegal immigrants.

By specialty harvests, I mean a matter of a few days of work, somewhat unpredictable because of weather. The professional migrant and aggressive local worker work for a number of employers and have a pattern they have followed for years. You don't hear about them because they arrange for their own housing and transportation and they earn very good wages.

My description of these farm operations brings me to this point. Employers will have difficulty positively identifying a large crew of workers arriving before daylight in the field. An inflexible temporary worker program will leave many crops unharvested, meaning thousands of lost jobs for those local citizens working in the packing, processing, storage and transportation industries. Prices to consumers will go up, and our balance of trades will suffer further erosion. The farmers I represent are in financial difficulty now, and this legislation could be devastating. They have trouble understanding, because today, under Washington State law, they cannot legally ask the questions necessary to determine a workers's legality, and tomorrow, under this bill, they could be in jail for hiring someone they couldn't identify.

When I read the current requirements of H-2, I have to seriously question whether or not the authors of these regulations have ever visited the Pacific Northwest to observe how unique the needs of our labor intensive specialty agriculture is. Workers must be able to move freely over large geographical areas to meet the needs of many growers as the harvest season progresses.

The H-2 program now in place has been bogged down with red tape and subject to uneconomic requirements to the point that it is unworkable for a large short-term labor need. Ideally, I would like to see the inclusion of a workable temporary guestworker program in this legislation. A number of farm groups are meeting around the nation to make positive suggestions for your deliberations. If that does not occur, I will offer several amendments to improve the bill to make it more acceptable to those farmers who hire workers for the short duration of 20 days or less.

My amendments are simple. The first would mandate that the state employment service be responsible for the legality of the workers it refers. A worker would receive some sort of verification from the agency he could bring to the prospective employer to prove that the state service had checked out his legal papers and relieve the farmer of additional paperwork when the worker arrived.

My second amendment also is designed to alleviate burdensome paperwork from the farmer. My amendment would eliminate the requirements for filling out paperwork under certain restrictive conditions depending on the legal status of that individual.

There is very little housing available on the West coast that would satisfy the rigid requirements of certified H-2 dwellings. Many workers now live with other family members and I am proposing an amendment to allow this practice. I want to give the employer and the employee the option to substitute payment of a reasonable allowance in lieu of the actual furnishing of housing accommodations and meal preparation facilities. I only wish that all Members would have the opportunity to witness how easily this could be accomplished and how readily it would be accepted by the farmworkers in some areas of the country. I do not view these changes as the answer to the agricultural labor problem, but I do see them as a way to improve upon the disastrous impact this bill would have on the economy of the Northwest. Passage of this bill in a form which does not provide for an adequate labor supply will not only cripple the fruit industry but hurt related industries such as the timber industry which supplies the packing cartons, the rail and trucking industries, and the various ports which handle export cargo.

In conclusion, I join you in agreeing that we need a new immigration policy, and commend the Immigration Subcommittee Members for their efforts. For my district their answers fit neither the Hispanic community nor the employers. By amendment, I trust the legislative process can consider the special regional needs of the Northwest.



March 1, 1983

STATEMENT OF CONGRESSMAN DANTE B. FASCELL (D-FLA)  
BEFORE THE IMMIGRATION, REFUGEES, AND INTERNATIONAL LAW SUBCOMMITTEE  
OF THE HOUSE JUDICIARY COMMITTEE  
ON IMMIGRATION REFORM

Mr. Chairman and members of the Subcommittee, I commend you for your early action in holding these hearings. As the Representative of the 19th District of the state of Florida, which includes part of Dade County and Monroe County (the Florida Keys), I have long been concerned with immigration issues. As you know, our community has been severely affected by the impact of mass emigration from the Caribbean and Central America--both legal and illegal--for decades.

Illegal immigration to the United States has reached unprecedented levels and will continue to present problems for this nation in this decade and beyond. Throughout my Congressional service, I have been a strong advocate of strict enforcement of our existing immigration laws. We must remain as committed to strict enforcement of

the laws as our resource and manpower constraints permit, but enforcement alone is not enough. If we are to regain control of the system by which we decide who will and will not enter and reside in this nation, a system which is rapidly becoming uncontrollable by law enforcement and other standards, we must make reform of the United States' immigration laws one of our top national priorities.

Our immigration system is in dire need of updating. This nation has not passed comprehensive immigration legislation since 1965. Since that time, we have seen mass migrations of people to the United States--driven by political and economic pressures in their homelands--from several of the world's most troubled areas, most notably Southeast Asia, the Caribbean and Central America.

Illegal immigration to our nation is a problem that is national in scope and for which the federal government must bear the ultimate responsibility. Its consequences will have an increasing impact upon the formation and implementation of U.S. domestic and foreign policies in the future. The United States has a long tradition of welcoming all people who wish to come to this nation. As a result, for many the U.S. has been and remains the country of first resort. Although I am not suggesting that we abandon our open-door policy, the U.S. simply cannot absorb all of those who wish to settle here.

We must remember that immigration is an international problem and we must continue to aid and encourage other nations to accept greater responsibility for the millions of people, especially refugee populations, who seek a new homeland. The ways in which we deal with those who wish to live in our country, and with other nations that also must face immigration's realities, will have implications for our relations with other nations for years to come.

Domestically, the employment of undocumented aliens has an impact on indigenous workers in all sectors of our economy. It is believed that a certain amount (estimated to be one to two percent, or approximately 1.5 million jobs) of displacement of workers at the lower scales of the secondary labor market is occurring, due to employment of undocumented workers. Paradoxically, while it is illegal for an undocumented alien to work in this nation, it is not now illegal for American employers to hire undocumented workers.

The Congress must consider sanctions against those employers who knowingly hire undocumented workers at the expense of the domestic labor force. The American labor market is already straining to reemploy the millions who are out of work and cannot afford to attempt to absorb an additional, and expanding, labor supply of undocumented workers from other countries.

Illegal immigration affects all states and regions, but it places a particularly severe burden on several areas of the country, including my South Florida district. Furthermore, State and local governments simply cannot afford to bear the burden of providing services for illegal aliens. This is a federal responsibility that should not be borne by local taxpayers. For this reason, the Congress adopted legislation which I authored to provide for and facilitate reimbursement by the Federal government for services provided to Haitians who entered the U.S. on or before November 1, 1979, and for Cuban-Haitian Entrants who entered between April 21 and October 10, 1980.

State and local budgets have been increasingly strained as the result of deep cuts in the federal budget over the past two years. During this time of record high unemployment, when our nation's scarce resources have been spread thin to accommodate those citizens and resident aliens who are out of work and in need of public assistance, it is unrealistic, unwise and unfair to place an additional burden on the taxpayers of states and localities to provide for undocumented aliens whom they can ill afford to support.

The major goals of current U.S. immigration laws are the reunification of families and concern for human rights. For these and other reasons, we must strive to reform and streamline the system for legal immigration and to provide for swifter processing of political



asylum claims. With these goals in mind, one of the first steps that must be undertaken is the computerization of the Immigration and Naturalization Service (INS). Without state-of-the-art computer technology, INS cannot possibly hope to reduce its backlog of legal immigration cases. Applicants for legal immigration to this country currently face a wait of up to several years while their immigration status is determined. It is believed that this waiting period may drive an unknown number of legal applicants who wish to be reunited with their families, already residing in the United States, to emigrate to the United States by surreptitious means. If this process can be streamlined, some illegal immigration might be eliminated.

A provision must be enacted for the streamlining of political asylum cases, which currently number in the tens of thousands. Existing asylum and exclusion procedures--all asylum cases are now determined on a case-by-case basis--were never intended to accommodate large numbers of claims and, as a result, the adjudication process has succumbed under the weight of increasing claims. Meritorious claims cannot be handled in a timely fashion penalizing asylees, and those with lesser claims to asylum are afforded additional time in this country to which they may not be entitled.

During the 97th Congress, immigration was at the forefront of the legislative agenda and I stress today the need to continue the debate on this crucial issue. While the legislation in the last

Congress had many problems, it still provided a focal point for the discussion on immigration reform. Illegal immigration to the United States is not likely to cease in the near future, and the consequences are likely to be felt more acutely as time passes. Not only must we devise a policy that will begin to deal now with the millions of undocumented aliens currently residing and working in this nation, but we must strive to pass realistic, comprehensive legislation that will adequately prepare us for the future. We cannot focus the debate on mass deportation of millions of individuals to solve our immigration problems. Nor can we depend on law enforcement officials within the INS alone to close our borders to all comers. However, we can streamline the legal immigration process to where it benefits both the United States' interests and those individuals with a legitimate claim to residence in this country. I am hopeful that our colleagues in the 98th Congress will meet the challenge before us.

KIKA DE LA GARZA  
15TH DISTRICT, TEXAS

**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

Statement by  
E (Kika) de la Garza  
Before the  
Subcommittee on Immigration, Refugees,  
and International Law  
Committee on the Judiciary

16 March 1983

Mr Chairman

As we again meet in this Congress to discuss a revision of the nation's immigration laws, I want to thank you for giving me the opportunity to submit this testimony to discuss H R 1510, the Immigration Reform and Control Act. This is a subject which well deserves Congressional attention, and I would like to begin by saying my feelings remain now exactly as stated on the floor of the House this past December during consideration of the legislation. Permit me to reiterate my feelings both as Chairman of the Agriculture Committee expressing the concerns of the agricultural sector, and also as an individual member representing the 15th District of Texas, part of which lies on the border with Mexico.

Let me say, Mr Chairman, that the concerns which I bring to the membership will in no way diminish my admiration and respect for the distinguished chairman of the committee or the distinguished chairman of the subcommittee or the respective minority members, nor for the enormous work done by the Commission, which was the initial work that eventually brought us to where we are today.

First, I would like to express that in the agricultural sector there is tremendous opposition to this bill which I have personally discovered from farmworkers as to what the legislation could do to them. The same opposition appears perhaps for different reasons from farmers or producers, but in this case both object to the same specific provision -- employer sanctions. Sanctions, I constantly hear in my travels, would only result in employers being reluctant to hire anyone who looks Hispanic or foreign. People constantly say to me that they can only equate this with discrimination.

It would be sacrificing my integrity to my oath of office if I were to say that you should not prosecute those that are guilty under the law. That is not what I am saying, but that when there is a rampant or widespread coverage in an area or in a specific factory or in a specific part of the city, legal and illegal aliens are all brought in and the managers or the owners of these establishments have I feel great and legitimate concerns.

Then there is what I personally regard as a rather abhorrent idea -- a national ID card. This, from what I constantly hear, is received with about as much enthusiasm as employer sanctions. It is an idea that quite simply runs contrary to the Constitution and to the concepts and precepts on which this nation was founded. I should emphasize I hear this equated with totalitarianism.

Certainly there are some who say, "Well, you have to have a driver's license. That is a privilege. You have to have social security. That is a privilege." But when you have to identify yourself in-country, not as you are leaving or as you are coming, then I think this is an insult.

If you will bear with me there is also great concern, which I share, that in our area of the country, or perhaps from New York into the South and into California, if the employer is concerned that he might be brought into a court of justice or that criminal sanctions or civil sanctions would be brought against him, he is going to be very careful. My concern is that if you start at Oregon, Washington, California through to the Mexican coast to the South and then into the Northeast, anyone who looks like me is going to have to identify himself every time he asks for a job.

This I think our Constitution would classify as an imposition on the individual liberty of a person or of a citizen. I share this concern because in the realms of Capitol Hill there is often trouble pronouncing my name. Can one imagine if I showed up in Alabama looking for a job, or in West Texas, or Kentucky someplace?

Second, what about areas of this legislation where there is what appears to be unintentional infringement of the law. We have throughout the border those who have what is called a border crossing permit by which they can come across the border without having a visa or passport, but they're not supposed to work. They can only come for forty-eight hours or seventy-two hours.



Many of these are women who are retained as houseworkers by people on the border, and I am concerned that if they would be covered by the sanctions the result would be catastrophic. On the border you would have many housewives who had no other intention than to get some help for their households who would have to be asking, "Do you have papers? Can you identify yourself?"

The housewife with three or four children that might need to go to work, for example, would have a duty imposed on her above and beyond the norm of any other ordinary citizen. What is being imposed is a responsibility for enforcement of the law that should belong to an enforcement agency.

Another concern I would like to discuss is amnesty. This is a paradox because people who themselves have come as aliens and legalized their status tell me that they do not feel we should legalize someone who came infringing the law -- someone who came, unlike they did, waiting in line, getting the papers, paying the lawyer.

It is very difficult to come into this country legally. That is why we have so many illegals. Someone who wishes to come into this country has to wait months and years to unite himself with his family. They have to get all kinds of requirements. In short, it is being made more difficult for those people who want to come legally, and yet you are giving those that come illegally the ability to legalize themselves. I think, and this is just a personal theory on my part, that this is being done because it is the easiest thing to do -- not because it is the right think or the proper thing, but the easiest.

You will hear, "What are we going to do with them? We can't get them all together. We can't ship them back to wherever they came from. Let's just legalize them and start from here."

That would be fine if the process by which others who come legally were simplified. I am not one of those who feel that we have reached the point where we can have no more people come from other parts of the world. We have terrible problems in this country now, but we still are the greatest country in the world. The farm sector has terrible problems, but we still are able to produce. We have economic problems because it is a world situation as far as economics is concerned, but saying we should put a cap on the number of people from other countries will not solve that. What it will eventually mean is that other de la Garza's or Coelho's might not eventually serve in this Chamber.

Another concern which I addressed in the last Congress by introducing an amendment to the immigration bill has to do with the barbed wire which is the first thing one sees coming into the country or the last thing you see going out. It reminds one of the Berlin Wall. I detest this and feel it must be addressed. I say this, Mr Chairman, because I have gone around the world saying how we do not have any army between us and Mexico -- how we do not have guns aimed across the river, and yet you see that barbed wire like the one I saw in Berlin between East and West. It is sad.

Now before I conclude let me revert to the personal. The area I come from has been New Spain, Mexico and eventually Texas when it declared its independence. Later, the U S had a conflict as to where the boundary would be -- the Nueces or the Rio Grande river. Had it been Nueces, I would probably be making this talk in the Congress of Mexico.

But when the boundary of the Rio Grande was set we became genuine citizens of the United States of America. Having mentioned this, I then feel that for families like mine which were not part of the original thirteen colonies history or fate has said if you are south of the river you are Mexican, and if you are north of the river you are genuine U S citizens, American citizens whose families could go and come.

Now there are those in our area who say that we should have no infringement, that if you are a member of one family the river should not mean anything -- that one should have the privilege to come and go. And there are many who espouse the proposition that there should be no immigration process at all, that if you can prove that you live in the area and fate made the river a juridical boundary, that should not apply to you. Many who cross the river still feel that way.

There is also concern -- and I have seen it in my area in letters to the editor that maybe we should not allow anyone to cross, that maybe we should put the Army out there or put the Marines out there or someone from one border to the other to keep everyone out. But we are united to such an extent economically and by family ties that Mexico is an integral part of the security not only of our area, but of the United States, so their security and their economic stability is also an integral part of ours. We cannot escape this.

The question may be asked why do you bring all of this out during these hearings? The answer is because it impacts on the economic stability that we have. It impacts on both sides of the river. It impacts also on the schools.

The Supreme Court of the United States now says that we have to educate children regardless of whether their parents are here legally or not, and this impacts tremendously on us and is an economic burden. This bill has some relief for that.

So let me say that I have found as chairman of the committee and individually -- and I say this with all sincerity and respect for my colleagues on this committee and the Commission -- no one who has told me to go and vote for that good bill that they have on immigration. Rather, all of the concern has been from the employer or from the employee. And on the asylum question there is great anxiety in my area because through there come many of the people from Central America. In this area the legal process is not working and this legislation does not really alleviate this situation.

We do not have enough people in the consultates. We do not have enough people in the visa sections. This is something we should be addressing as well as the issue of those who would want to come in legally?

My concern is not about land. We have land. I know that we have unemployment now and I know we have tremendous economic problems, but that is for other reasons not because of the people who come although I must also say that there are some concerned farm workers who feel that some aliens legal, or otherwise, infringe in the areas where they might get employment.

Mr Chairman, let me close by saying I realize I am only raising questions, but in my heart I feel they are questions which must be raised and addressed. Thank you.

WALTER E. FAUNTROY  
DISTRICT OF COLUMBIA

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**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

March 15, 1983

The Honorable Romano L. Mazzoli  
Chairman  
Subcommittee on Immigration, Refugees, and  
International Law  
2137 Raybrun House Office Building  
Washington, D.C. 20515

Dear Rom:

I very much appreciated the opportunity to testify before your Subcommittee on H.R. 1510. At the time of my testimony there were a number of comments and questions which merit response.

There were comments and or questions in five areas for which I would like to submit further statements for the record. These five areas were:

- A question from Congressman Sam B. Hall, Jr. concerning the number of Haitian refugees returned to Haiti.
- A statement by Congressman Dan Lungren concerning my statement that there were no Blacks or Hispanics at the senior executive level of the Immigration and Naturalization Service and that there is a need for affirmative action in the Service.
- Your strong disagreement with my statement that the provisions of H.R. 1510 would lead to a significant reduction in judicial review for asylum applicants.
- Questions from Congressman Hamilton Fish, Jr. as to whether the language he had contributed to section 121 on summary exclusion did not adequately address my concerns with this provision.
- A request from Congressman Bill McCollum to examine his proposal in the 97th Congress, H.R. 5649, for the purpose of determining whether or not that proposal might address my concerns with judicial review.

In answer to the first question, according to the Department of State there have been a total of 634 returnees from the United States and people interdicted on the high seas who were returned to Haiti. Of this total of 634, 424 people are returnees from the United States of America and 210 are returned interdictees.

COMMITTEE ON  
DISTRICT OF COLUMBIA

SUBCOMMITTEES:  
FISCAL AFFAIRS AND  
HEALTH  
GOVERNMENT OPERATIONS AND  
METROPOLITAN AFFAIRS

COMMITTEE ON  
BANKING, FINANCE AND  
URBAN AFFAIRS

SUBCOMMITTEES:  
CHAIRMAN, DOMESTIC  
MONETARY POLICY  
ECONOMIC STABILIZATION  
GENERAL OVERSIGHT AND  
RENEGOTIATION  
HOUSING AND COMMUNITY  
DEVELOPMENT

CHAIRMAN, CONGRESSIONAL  
BLACK CAUCUS



Of this total of 634 people returned, 183 have been contacted. Contact with these 183 people has been carried out by U.S. Embassy personnel in Haiti, who, have made 22 visits to conduct 272 interviews.

In response to Congressman Dan Lungren's statement, there is within the Immigration and Naturalization Service, according to Mr. Neal Harwood (632-4625) of the Executive Personnel Development Office, one Hispanic and no Black personnel at the senior executive level. My statement said there were none. I stand corrected but believe that the presence of only one Hispanic and no Blacks does not argue against my advocacy of the need for affirmative action in the Immigration and Naturalization Service.

In response to your objection, I would contend that the provisions for judicial review contained in H.R. 1510 do not add any additional access to judicial review for asylum applicants than that already available under existing law and procedure. Current law states that "petitions for review" to the courts of appeals shall be the sole and exclusive procedure for judicial review of final orders of deportation and exclusion (Section 123 (a) (2)).

While it is true that H.R. 1510 would codify what is now accepted practice and procedure by mandating final judicial review before circuit courts of appeals, these proposed procedures would nonetheless restrict access to federal district courts for the limited number of cases which involve pattern and practice violations of due process requirements. Petitioners should not have to exhaust administrative remedies before there is access to relief in cases where there may be reason to believe that there has been a pattern and practice of denying due process. While the intent of your proposal to insure access to judicial review through the circuit courts of appeals through codification is laudable, the effect of removing the federal district courts from jurisdiction over the limited number of cases involving pattern and practice violations, as in the case of the Haitian Refugee Center v. Smith, would be to restrict needed legal protection to asylum applicants.

You will recall that in the case of the Haitian Refugee Center v. Smith, Judge King stated that:

The manner in which I.N.S. treated the more than 4,000 Haitian Plaintiffs violated the Constitution, the immigration statutes, international agreements, I.N.S. regulations and I.N.S. operating procedures. It must stop.

Under section 123 (b) (2) of H.R. 1510, "no court shall have jurisdiction to entertain a petition relating to a determination concerning asylum under Section 208 except in a petition for review under subsection (a)." This language should be read in conjunction with the language of Section 123 (a) which specifically states that section 279 of the Immigration and Nationality Act granting district courts jurisdiction over all causes arising under the Immigration and Nationality Act and 28 U.S.C. 1331 granting federal courts general jurisdiction over federal law matters may not form the basis of recourse to federal district courts.

The effects of this language, if adopted, would be the following:

- 1) Class-wide relief would be eliminated;
- 2) Illegal agency action could not be systematically enjoined, but would have to be overturned on a case by case basis;
- 3) Indigent asylum seekers would be required to secure counsel individually to obtain relief; and,
- 4) Asylum seekers intimidated and ignorant of their legal rights would be returned before exercising legal protection available to them.

Given the above it is requested that you give reconsideration to the provisions of Section 123.

This brings me to my response to Congressman Fish's questions as to whether the language he had contributed to Section 121 on summary exclusion did not adequately address my concerns with this provision. The summary provisions of H.R. 1510 contained in Section 121 do not remove my concern and opposition to this provision. The language that stipulates that the examining I.N.S. officer must inform the alien of his or her right to have an administrative law judge redetermine *inter alia* the finding that the alien does not indicate an intention to apply for asylum is inadequate. The hearing before the administrative law judge would be non-adversarial and it is unclear whether there is a right to have counsel. Additionally, there is a lack of legal certainty as to what constitutes an "application" for asylum. This suggests that there is some possibility that an imprecise anecdotal indication, not cast in technical or quasi-technical language that the alien has concerns about his or her safety, may be considered an insufficient indication of an "intention to apply for asylum" in the narrow sense.

The results of inquiries of lawyers representing Haitians suggest that in almost all instances, and regardless of the degree of fear which a Haitian has, Haitians tend to be unaware of the availability of specific legal remedies such as asylum.

Assuming the most generous interpretations of what constitutes an application for asylum, even an imprecise articulation of a fear of return, will not, for very functional reasons, be readily forthcoming. Many Haitians, at all levels, believe that the United States Government and the Government of Haiti are in close alliance, an alliance which extends even to condoning violations of human rights in Haiti. While this perception may sound unreasonable to us, it is a clearly held belief of many Haitians. Additionally, there is an acute fear and distrust of government officials of any country, a fear that is quite understandable given the role of the government in Haiti.

Thus while Section 121 requires an immigration officer to inform an alien of his right to a redetermination of the finding that he does not indicate an intention to apply for asylum, it is highly likely that bona fide asylum applicants will, for all of the above reasons, not be willing to make allegations or divulge information which would result in redetermination by the administrative law judge.

Finally, the proposal of Congressman Bill McCollum would not be an adequate remedy for the provisions of section 123 of H.R. 1510. While the provisions of H.R. 5649 proposed in the 97th Congress would establish a more independent court, requirements of judicial review would be all but removed save review by the Supreme Court. Under Section 116(b) (1-2):

No petition for habeas corpus shall be entertained and no extraordinary writ shall be directed to any government official or employee and no injunctive or declaratory relief shall be granted with respect to a deportation, exclusion, asylum, or any other matter concerning the status of an alien (or the detention associated therewith) by a court of the United States, other than by the Immigration Court or the Supreme Court.

No petition for habeas corpus shall be entertained with respect to a deportation or exclusion order by the Immigration Court if the validity of the order has been previously determined in a proceeding before the Court, unless the petition presents grounds which the Court finds could not have been presented in such prior proceeding, or the Court finds that the remedy provided by such prior proceeding was inadequate or ineffective to test the validity of the order.

Section 106 (relating to judicial review of orders or deportation and exclusion) and 292 (relating to right to counsel) are repealed.

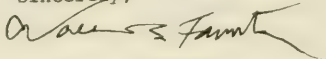
Further Section 116 (a) states:

Except as provided in paragraph (2), nothing in this section shall be construed to require the Attorney General to defer deportation or removal of an alien after the issuance of a deportation or exclusion order by a trial division judge because of the right of judicial review in the appellate division. Nothing contained in this section shall be construed to preclude the Attorney General from detaining or continuing to detain an alien or from taking him into custody pursuant to subsection (b) or (c) of section 242 at any time after the issuance of a deportation order.

Needless to say, the provisions of H.R. 5649 would not be acceptable as a remedy for the problem contained in Section 123 of H.R. 1510.

Again, I very much appreciate the opportunity to exchange views with you and other members of the Subcommittee. Additionally, I very much appreciate your willingness to consider my views on this matter and thank you for the courtesy extended to me by the Subcommittee and its staff.

Sincerely,

A handwritten signature in dark ink, appearing to read "Walter E. Fauntroy", with a stylized flourish at the end.

WALTER E. FAUNTROY  
Chairman,  
C.B.C. Task Force  
on Haitian Refugees



**Congress of the United States**  
**House of Representatives**  
**Washington, D.C. 20515**

March 10, 1983

Hon. Romano L. Mazzoli, Chairman  
 Subcommittee on Immigration, Refugees and International Law  
 2137 Rayburn H.O.B.  
 Inside Mail

Dear Mr. Chairman:

As I mentioned during my recent testimony before your Subcommittee, the impact on Florida from illegal immigration, and specifically the Cuban-Haitian Entrants of 1980, has been tremendous. In response to the question posed to me by my colleague from Florida, Mr. Smith, regarding the fiscal impact on Palm Beach and Broward Counties, I enclose portions of a report prepared by Governor Graham's Office of Planning and Budgeting. I wish to share with you these statistics on the fiscal burden which the state and the local governments have had to endure for the past several years.

This report was prepared February 3, 1982 and covers the initial impact of the Cuban-Haitian Entrant problems. While some of the problems caused by the large influx of immigrants into Palm Beach and Broward Counties still persist, the assistance and generosity of private industry and citizens alleviated many problems. The publicity this matter has received, and the assistance of those, such as yourself, who are working to reform our immigration laws, have made the situation much better in the past months. However, since many of the emergency refugee resettlement programs have been disbanded, comprehensive updated reports have been unavailable.

Among the statistics provided in this report are the dollar amounts spent and unreimbursed in many different areas. Some of these areas are:

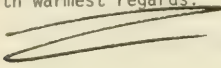
- \*Aid to families with dependent children (AFDC) or general cash assistance
- \*Food stamps
- \*English as a second language (ESL) for those 16 years or older who are not enrolled full-time in an elementary or secondary school
- \*Outreach services
- \*Employability assessment services
- \*Manpower employment services (including career counseling, development of individual employability, job orientation, job development, job placement and follow-up, etc.)
- \*Vocational training
- \* Skills recertification (including short term preparation for the G.E.D. when a diploma is required by the employer or the state licensing board)
- \*Day care
- \*Transportation
- \*Social adjustment services (information and referral services, emergency

services, health-related services and home management services)  
\*Translation and interpreter services

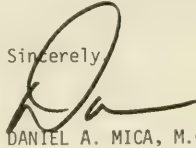
Palm Beach and Broward Counties also provide grocery orders, drugs, funds to pay for hospitalization, physicians fees and other medical services.

I am hopeful that this information will be useful to you in your battle for immigration reform legislation. Please be assured of my continued support in this endeavor and if I may be of assistance, please let me know.

With warmest regards,



Sincerely,

  
DANIEL A. MICA, M.C.

DM:ma  
Enclosure

cc: Larry Smith

**INTERIM REPORT**

**The Fiscal Impact of Refugees and Entrants on  
State and Local Government in Florida  
from 1980 to the Present**

**The Governor's Office of Planning and Budgeting**

**Tallahassee, Florida**

**February 3, 1982**

## SUMMARY

	State Costs Unreimbursed	Local Costs Unreimbursed	Federal Reimbursement
<b>Medicaid</b>	\$ -0-	\$ -0-	\$ 29,815,293
<b>Health Services</b>			
Hospital Services	-0-	5,502,736	14,993,267
Public Health Services	-0-	1,949,384	647,237
Cash Assistance	-0-	-0-	42,855,267
Social Services	-0-	572,400	27,035,625
Food Stamps	-0-	-0-	45,168,436
Education- K-12	37,704,236	39,386,235	21,897,250
Adult Education			
School Districts	15,304,800	29,415,827	-0-
Federal Contracts	-0-	-0-	9,720,417
Community Colleges	4,230,794	-0-	430,456
Criminal Justice	3,572,162	11,052,149	4,029,987
Housing	-0-	-0-	4,795,336
Employment	-0-	-0-	18,627,737
<b>Total</b>	\$ 60,811,992	\$ 87,878,731	\$ 219,416,308
<b>Total Unreimbursed Cost</b>		148,690,723	



SUMMARY OF FEDERAL FUNDING SOURCES  
SPECIFICALLY DESIGNATED FOR REFUGEES AND ENTRANTS<sup>1</sup>

<u>Federal Source</u>	<u>Federal Reimbursement to Agencies Within Florida</u>
One-Time Grant Assistance	\$ 32,299,861
Includes funds allocated on an emergency or one-time only basis	
Ongoing Assistance	
a. Refugee Act of 1980	\$ 31,564,900
b. Refugee Education Assistance Act of 1980, Title V	\$ 81,077,074
c. Migration and Refugee Assistance Act of 1962	\$ 26,086,715
	<hr/>
Subtotal	\$138,728,689

<sup>1</sup>Excludes federal funds intended for the general population that have been used to cover entrant/refugee costs.

## ONE-TIME GRANT ASSISTANCE

	<u>Amount Available to State &amp; Local Governments</u>	<u>Federal Reimbursement to Agencies Within Florida</u>
<u>EMERGENCY FUNDS:</u>		
<u>Emergency Migration and Assistance Fund</u>		
U.S. State Department funds released by Executive Order to local and state government primarily for transportation and resettlement	\$ 1.24 Million	\$ 1,243,520
<u>Emergency Displaced Persons</u>		
Funds from the U.S. Department of Health and Human Services (HHS) that went primarily to community action agencies		498,266
<u>Emergency Shelters</u>		
Immigration and Naturalization Service (INS) funds allocated directly to community action agencies for food, clothing and shelter		476,611
<u>Federal Emergency Management Agency (FEMA)</u>		
1980 Supplemental Appropriation under Emergency declaration. Received by the Bureau of Disaster Preparedness at the Florida Department of Veteran and Community Affairs and contracted with local agencies	5 Million	3,132,332 + 308,454 (pending)

## ONE-TIME GRANT ASSISTANCE (Continued)

	<u>Amount Available in State &amp; Local Governments</u>	<u>Federal Reimbursement to Agencies Within Florida</u>
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HEALTH AND MENTAL HEALTH SERVICES:

Public Health Service funds for community mental health centers and community health centers

	\$ 13.9 Million	\$ 6.8 Million
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EMPLOYMENT SERVICES:

U.S. Department of Labor funds received by the Florida Department of Labor and Employment Security

	190,525	
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EDUCATION:

Bilingual education (Title VII of the Elementary and Secondary Education Act of 1965) special summer program (1980) for entrant children in Dade County <sup>1</sup>

	\$ 1 Million	\$ 1 Million
--	--------------	--------------

Elementary and Secondary Education Act of 1965 Secretary's discretionary funds for educating Cuban/Haitian entrants in grades K-12 during 1980-81

	7.7 Million	5,208,000
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Adult Education Act

	17.6 Million	9,720,417
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Federal contracts with agencies providing language and vocational training

<sup>1</sup> Monroe County also used \$105,004 in federal bilingual education funds from the regular district program. This was not a special award, and therefore is excluded from this table.

ONE-TIME GRANT ASSISTANCE (Continued)

	<u>Amount Available in State &amp; Local Governments</u>	<u>Federal Reimbursement to Agencies Within Florida</u>
<u>CRIMINAL JUSTICE:</u>		
U.S. Cuban/Haitian Task Force /Law Enforcement Assistance Act (LEAA)	\$ 5 Million	\$ 3,821,736
Funds awarded to the Bureau of Criminal Justice, Florida Department of Veteran and Community Affairs These were residual funds from the LEAA.		
TOTAL		\$ 32,399,861



DIRECT REFUGEE ASSISTANCE PROGRAMS - ONGOING

1. REFUGEE ACT OF 1980

a. Cash/Medical Assistance, Unaccompanied Minors Program  
and Related Administration

October 1978 - September 1981 \$15,564,062  
October 1981 - March 1982 6,279,724  
(Note: Supplemental Security Income (SSI) was included beginning Federal  
Fiscal Year 1982)

Subtotal

\$21,943,786

b. Social Services and Related Administration

October 1978 - September 1981 \$ 5,664,677  
October 1981 - March 1982 1,878,750

Subtotal

\$ 7,543,427

c. Educational Services for Refugee Children in Grades K-12  
(Transition Program for Refugee Children)

1980 - 81 \$ 1,201,587  
1981 - 82 (pending) 876,100

Subtotal

\$ 2,077,687

TOTAL - Refugee Act of 1980

\$31,564,900

## DIRECT REFUGEE ASSISTANCE PROGRAMS - ONGOING (Continued)

2. REFUGEE EDUCATION ASSISTANCE ACT OF 1980<sup>1</sup>, TITLE V (Fascell-Stone Amendment)

a.	<u>Cash/Medical Assistance and Related Administration</u>	
	October 1980 - September 1981 (Includes retroactive payments)	\$49,257,318
	October 1981 - December 1981	5,000,000 <sup>2</sup>
		<hr/>
	Subtotal	\$54,257,318
b.	<u>Social Services and Related Administration</u>	
	October 1980 - September 1981 (Includes retroactive payments)	\$18,344,579
c.	<u>Unaccompanied Minors</u>	
	October 1980 - September 1981	\$ 2,475,177
d.	<u>Educational Services for Entrant Children in Grades K-12</u>	
	1981 - 82	\$ 6,000,000
		<hr/>
	TOTAL - Refugee Education Assistance Act	\$81,077,074

<sup>1</sup>Titles I through IV addressing education, have never been funded.<sup>2</sup>Partial grant award, remaining award has been delayed.

DIRECT REFUGEE ASSISTANCE PROGRAMS - ONGOING (Continued)

3. MIGRATION AND REFUGEE ASSISTANCE ACT OF 1962<sup>3</sup>

a.	<u>Cash/Medical Assistance</u>	\$18,580,715
	October 1, 1980 - September 30, 1981	
b.	<u>Educational Services</u>	7,506,000
	(Funds discontinued June 30, 1981)	
		<hr/>
	TOTAL - Migration and Refugee Assistance Act of 1962	\$26,086,715

<sup>3</sup>Although funds under this Act have been discontinued, the funding authority still exists.

## MEDICAID

## DISCUSSION:

The Refugee Act of 1980 and Title V of the Refugee Education Assistance Act of 1980 authorize full Federal funding for all Medicaid services for AFRC, SSI and General Assistance eligible refugees and entrants for up to three years from their date of entry into the United States. Current Federal policy has provided total reimbursement. Elimination of General Assistance after 18 months will result in a large proportion of this population being ineligible for the State's Medicaid program thus shifting the financial burden to local governments and hospitals. At the best, the General Assistance population will be forced to look to local government for medical care after the 36 months maximum allowed in the Federal authorizing legislation.

FISCAL IMPACT (7/81-11/81)		(a) State Costs Unreimbursed	(b) Local Costs Unreimbursed	(c) Federal Reimbursement	Total Costs (Sum of a-c)
<u>Persons Served</u>					
<u>Average Monthly Caseload (persons)</u>					
<u>AFRC Eligibles</u>					
Entrants	7,090	-0-	-0-	\$3,596,805	\$3,596,805
Refugees	2,642	-0-	-0-	2,259,002	2,259,002
<u>SSI Eligibles</u>					
Entrants	4,925	-0-	-0-	9,739,107	9,739,107
Refugees	187	-0-	-0-	249,256	249,256
<u>General Assistance</u>					
Entrants	30,889	-0-	-0-	11,947,492	11,947,492
Refugees	5,483	-0-	-0-	2,023,631	2,023,631
<b>TOTAL</b>	<b>51,216</b>			<b>\$29,815,293</b>	<b>\$29,815,293</b>

DATA SOURCES: Automated client information is maintained by HRS for all Medicaid expenditures.



## HEALTH SERVICES

## DISCUSSION:

Local governments, particularly Dade County, have been hard-hit by the costs of providing health services to Cuban and Haitian entrants which have not been reimbursed by the federal government. To be eligible for federal reimbursement under Faccell-Stone, the patient must have an I-94 card from the Federal Immigration and Naturalization Service stamped "entrant". Unreimbursable costs are generated especially in emergency or life-threatening situations, when proper documentation cannot be obtained prior to treatment or when the individual is in need of immediate medical attention and no INS identification in their possession. These unreimbursable costs are ultimately borne by local government.

FISCAL IMPACT:			
	(a) State Costs Unreimbursed	(b) Local Costs Unreimbursed	(c) Federal Reimbursement
<u>Hospital Services</u>			
Jackson Memorial	\$ -0-	\$ 5,451,396	\$ 14,550,264
Sacred Heart Hospital	-0-	51,340	143,003
Subtotal	\$ -0-	\$ 5,502,736	\$ 14,993,267
<u>Public Health Services</u>			
Services provided by County Health Units primarily from January 1 to December 31, 1981	\$ -0-	\$ 1,949,384	\$ 647,237
TOTAL	\$ -0-	\$ 7,452,120	\$ 15,640,504
			\$ 20,301,660
			194,343
			\$ 20,496,003
			\$ 2,596,621
			\$ 23,092,624

### Health Services (Continued)

#### DATA SOURCES:

Data were gathered from Jackson Memorial Hospital and County Health Departments

#### Problems With Data:

Public health costs and reimbursements still need to be gathered for State fiscal year 1980-81. Further refinement and verification of public health data sources also needs to be conducted.

## COSTS BY COUNTY

## Health Services

County/Service	(a) State Costs Unreimbursed	(b) Local Costs Unreimbursed	(c) Federal Reimbursement	Total Cost (Sum of a-c)
<u>DAPE</u>				
<u>Jackson Memorial Hospital</u>				
October 1, 1979-December 31, 1981	\$ -0-	\$ 5,451,396 <sup>1</sup>	\$ 14,850,264	\$ 20,301,660
Includes 7,532 inpatient and 23,854 outpatient visits				
<u>County Health Department</u>	\$ -0-	\$ 1,605,000	\$ 510,000	\$ 2,115,000
January 1 through December 31, 1981				
Includes personal health, disease control and environmental health services				
Subtotal		\$ 7,056,396	\$ 15,360,264	\$ 22,416,660

<sup>1</sup> Unreimbursed hospital costs primarily include costs incurred since January 15, 1981 when stringent federal requirements for documenting Medicaid eligibility for entrants and refugees went into effect. This requirement was revised in December, 1981. The federal government is now reviewing for retroactive payments the lists of 2738 inpatients and 12,377 outpatient visits since January 15, 1981. Please note that the unreimbursed costs to Jackson Memorial Hospital excludes an additional \$1,470,059 in services provided to Nicaraguans.

## COSTS BY COUNTY (continued)

<u>County/Service</u>	(a) <u>State Costs Unreimbursed</u>	(b) <u>Local Costs Unreimbursed</u>	(c) <u>Federal Reimbursement</u>	<u>Total (Sum)</u>
PALM BEACH				
County Health Department	\$ -0-	\$ 115,281 <sup>2</sup>	\$ 96,854 <sup>3</sup>	\$ 212,135
January 1 - December 31, 1981				
Includes direct and indirect costs				
BROWARD				
County Health Department	\$ -0-	\$ 103,510	\$ 20,003	\$ 123,513
Includes services provided by the HHS County Health Unit (4/1/80 to 9/11/81); the Sunshine Health Center 8/81-9/81; and the Broward County Primary Care Division (6/1/81-9/30/81)				
COLLIER				
County Health Department	\$ -0-	\$ 35,747	\$ 20,380	\$ 56,127
10/1/79 to 9/30/80 and 1/1/81 to 12/31/81				
Includes personal health, disease control, environmental health and clinical support.				

<sup>2</sup>Includes actual unreimbursed costs from January 1 through September 30, 1981 and estimated costs for October through December, 1981.

<sup>3</sup>Includes \$86,229 reimbursed through August, 1981 and \$10,625 pending reimbursement through November.



## COSTS BY COUNTY (continued)

<u>County/Service</u>	(a) <u>State Costs</u> <u>Unreimbursed</u>	(b) <u>Local Costs</u> <u>Unreimbursed</u>	(c) <u>Federal</u> <u>Reimbursement</u>	<u>Total Cost</u> <u>(Sum of a-c)</u>
HILLSBOROUGH				
County Health Department	\$ -0-	\$ 28,928	\$ Unavailable	\$ 28,928
January 1 through December 31, 1981		(estimate)		
Includes an estimated 3500 hours of - administration and health services to Cubans and Haitians				
ESCAMBIA				
County Health Department	\$ -0-	\$ 60,918	\$ Unavailable	\$ 60,918
January 1 through December 31, 1981				
Includes immunizations, tuberculosis clinic, dental clinic, well-baby clinic, Family Planning clinic, and various other services as well as indirect costs				
Sacred Heart Hospital	\$ -0-	\$ 51,340	\$ 143,003	\$ 194,343
Escambia County Subtotal	\$ -0-	\$ 112,258	\$ 143,003	\$ 194,343
TOTAL - All Counties	\$ -0-	\$ 7,452,120	\$ 15,640,504	\$23,092,624

## MENTAL HEALTH

### DISCUSSION:

Mental health services were among the variety of services needed by the massive numbers of Cubans and Haitians entering South Florida. These services have been provided by the State mental health hospitals (specifically Florida State Hospital, Northeast Florida State Hospital and South Florida State Hospital) and by Community Mental Health Centers.

The first year after the boatlift (1980-81), federal funds were earmarked for community mental health centers experiencing the greatest impact. These funds were directly allocated to community mental health centers by the National Institute of Mental Health. For the current year (1981-82), funds were appropriated under the domestic assistance program of the Refugee Education Assistance Act. These funds are distributed by the State in the same manner as other community mental health and alcohol monies. The Department of Health and Rehabilitative Services contracts with the Mental Health District boards, which in turn contract with community mental health centers and other service providers.

Services provided by the community mental health centers have included psychiatric assessment and evaluation, rehabilitation, crisis intervention, individual and group therapy, chemotherapy, residential treatment and case management. Baker Act services include court-ordered, emergency evaluation and treatment at specifically designated facilities in the community.

### Problems with Data:

Federal reimbursements to community mental health centers in 1981-82 have already been accounted for in the "social services" section of this report. The Mental Health Program Office is currently identifying by HRS district allocations that went directly from NIMH to community mental health centers in 1980-81.

Although 51 Cuban and Haitian entrants were in the State hospital system as of mid-December, 1981, additional information on federal reimbursement needs to be gathered from the three hospitals serving these patients.

### Recommendations for Data Enhancement:

Additional contacts can be made with individual State hospitals, district mental health boards and providers to identify unreimbursed costs to the State and to local communities.

## CASH ASSISTANCE

## DISCUSSION:

A large percentage of the Cubans who came to Florida during the Mariel boatlift are single males not eligible for the State's Aid to Families with Dependent Children program, but eligible for General Assistance under the provisions of the Refugee Act of 1980 and the Refugee Education Assistance Act of 1980 which extended these benefits to entrants. This is in contrast to the general make up of earlier Cuban refugees who came with families. Eligibility for cash assistance does, however, bring with it eligibility for medical assistance and combined with Food Stamps provides a basic temporary support. Since a large number of the entrants are not eligible for AFDC, the uncertain future of the additional federal funding for entrants and refugees for cash and medical services poses a direct fiscal threat to local governments, particularly Dade County.

FISCAL IMPACT (2/81 - 1/82*)			
Entrants Served Avg. No. Cases	(a) State Costs Unreimbursed	(b) Local Costs Unreimbursed  General Assistance	(c) Federal Reimbursement  Total (Sum of a-c)
Entrants:			
Cuban: 17,271	-0-	-0-	\$31,223,877
Haitian: 6,207			
Refugees: 2,961	-0-	-0-	\$ 5,039,410
TOTAL 26,439			\$36,263,287
AFDC			
Entrants:			
Cuban: 2,016	-0-	-0-	\$ 4,783,496
Haitian: 697			
Refugees: 1,049	-0-	-0-	\$ 1,808,484
TOTAL 3,762			\$ 6,591,980

\* Total information since the implementation of the entrant program --- does not include retroactive claims by local governments for period 10/1/79 - 2/1/81

Cash Assistance (continued)

DATA SOURCES:

Specific information on refugees and entrants is collected by HRS on a routine basis. Summary data are produced on a monthly basis and additional data enhancement is not necessary.



## County by County Profile of Refugee and Entrant Program, January, 1982 (Continued)

	Refugee AFDC		Refugee GA*		Entrant AFDC		Entrant GA*		Total	
	Persons	Money	Persons	Money	Persons	Money	Persons	Money	Persons	Money
District 9	0	0	0	0	2	150	0	0	2	150
Indian River	0	0	0	0	0	0	0	0	0	0
Martin	0	0	0	0	0	0	0	0	0	0
Okeechobee	9	651	15	1,380	326	22,043	545	54,996	895	79,070
Palm Beach	0	0	0	0	141	10,018	666	75,456	807	85,474
St. Lucie	9	651	15	1,380	469	32,211	1,211	130,452	1,704	164,694
District Total										
District 10	8	600	56	4,636	363	24,035	887	88,510	1,314	117,781
Broward	8	600	56	4,636	363	24,035	887	88,510	1,314	117,781
District Total										
District 11	1711	105,848	3308	275,146	7,076	486,782	29,155	2,825,213	41,050	3,692,989
Dade	67	4,174	15	1,264	146	9,807	490	43,783	718	59,028
Monroe	1578	110,022	3323	276,410	7,232	496,589	29,695	2,869,996	41,768	3,752,017
District Total										
TOTAL	2383	162,874	7724	442,053	8426	578,549	33,286	3,235,498	44,919	4,418,974

COSTS BY COUNTY  
Education in Grades K - 12

ENTRANTS

County	State Fiscal Year	Number Served	State Costs Unreimbursed	Local Costs <sup>1</sup> Unreimbursed	Federal Reimbursement	Total Cost (Sum of a-c)
Dade	1980-81	13,313	\$ 9,546,942	\$ 10,937,172	\$ 5,388,330	\$ 24,872,443
	1981-82	11,427	8,828,637	11,708,884	6,000,000	26,537,521
Hillsborough	1980-81	611	439,951	1,332,547	383,316	2,155,814
	1981-82	532	698,599	537,030	-0-	1,235,629
Broward	1980-81	501	351,961	1,291,359	80,719	1,724,039
	1981-82	283	276,373	376,155	-0-	652,528
Palm Beach	1980-81	356	252,972	354,917	126,796	734,685
	1981-82	478	465,098	646,142	-0-	1,111,240
Monroe	1980-81	240	175,981	232,922	215,342	624,245
	1981-82	256	278,032	312,301	-0-	590,333
Orange	1980-81	59	43,995	-1,477	27,862	70,380
	1981-82	73	82,563	95,757	-0-	178,320
Collier <sup>2</sup>	1981-82	83	76,161	112,489	-0-	188,650
Other <sup>3</sup>	1980-81	260	186,979	20,937	91,198	299,114
	1981-82	164	187,517	204,870	-0-	392,387
TOTAL	1980-81	15,340	\$ 10,998,780	\$ 14,168,377	\$ 6,313,563	\$ 31,480,720
	1981-82	13,296	\$ 10,892,980	\$ 13,993,628	\$ 6,000,000	\$ 30,886,608

Cost by County, Allocation in Grades K-12 (continued)

<sup>1</sup> Local costs include local required effort under the FEFP plus excess costs, minus federal reimbursement. Excess expenditures were reported by the first five school districts listed in 1980-81. Excess costs for 1981-82 were estimated at \$1033 per student. For Hillsborough and Brevard, actual expenditures reported in 1980-81 were significantly higher than estimates for 1981-82. This accounts for the lower unreimbursed costs in 1981-82 for these counties.

<sup>2</sup> Collier County did not submit an entrant count for 1980-81.

<sup>3</sup> Includes counties with fewer than fifty (50) entrant students each year.

## COSTS BY CO.

Adult Education - Federal ESL Contracts<sup>1</sup>

County	(a) State Costs Unreimbursed	(b) Local Costs Unreimbursed	(c) Federal Reimbursement <sup>2</sup>	Total Cost (Sum of a-c)
Dade	-0-	-0-	\$ 7,717,921	\$ 7,717,921
Orange	-0-	-0-	751,368	751,368
Broward	-0-	-0-	320,873	320,873
Duval	-0-	-0-	153,743	153,743
Hillsborough	-0-	-0-	161,122	161,122
Palm Beach	-0-	-0-	151,226	151,226

<sup>1</sup> These programs serve entrants only.<sup>2</sup> Federal reimbursements for each county were determined by actual contract amounts for those providers serving only one county and by direct consultation with projects serving more than one county. Please note that the entire \$9.7 million is not accounted for since some administrative expenses are excluded. These county figures should be considered estimates.



## COSTS BY COUNTY

## Criminal Justice

County	(a) State Costs Unreimbursed	(b) Local Costs Unreimbursed	(c) Federal Reimbursement	Total Cost (Sum of a-c)
<u>Palm Beach</u>	Not Applicable	\$ 2,416	\$ 4,526 (LEAA) 20,598 (FEMA)	\$ 27,540
Collier	Not Applicable	36,685	-0-	36,685
Monroe	Not Applicable	26,248	36,755 (LEAA) 7,321 (FEMA)	70,324
<u>Broward</u>	Not Applicable	20,000	-0-	20,000
Lee	Not Applicable	25,027	-0-	25,027
Dade (County Government)	9,233,989		2,010,962	11,244,951
Dade (other than County Government. Includes Cities of Hialeah, Miami Beach, Miami Springs, etc.)	1,704,284		1,949,824	3,654,108
Hillsborough		2,500	-0-	2,500
TOTALS		\$11,052,149	\$ 4,029,987	\$15,082,137

Add<sup>1</sup>    111  
 EMPLOYMENT SERVICES  
 (Florida Department of Labor and Employment Security-  
 Bureau of Employment Services)

Cumulative October 1, 1980 through December 23, 1981:

COUNTY	CUBANS SERVED	HAITIANS SERVED
Alachua	9	2
Bay	5	1
Brevard	18	7
Broward	383	1,711
Collier	50	530
Columbia	10	2
Dade	22,970	6,097
Duval	215	31
Escambia	9	3
Highlands	12	69
Hillsborough	1,205	194
Indian River	0	23
Jackson	2	1
Latin	5	83
Lee	16	14
Leon	29	2
Monroe	11	91
Narbon	6	2
Monroe	842	8
Okaloosa	36	3
Orange	337	155
Osceola	11	8
Palm Beach	409	2,028
Pinellas	44	24
Polk	29	155
Putnam	8	1
Sarasota	29	5
Seminole	11	3
St. Lucie	18	667
Taylor	1	3
Volusia	16	0
TOTALS	26,746	11,923

# UNEMPLOYMENT RATE

## DISCUSSION:

Unemployment exists on whether or not the State unemployment rate includes unemployed Cuban and Haitian refugees. CETA Prime Sponsor has this is based 37% on the area unemployment rate. According to the Dade County CETA Prime Sponsor, the unemployed refugees would be rate \$2.5 million in additional CETA funding in Dade County.

The Department of Labor and Employment Security (DLES) believes the refugees are not included. USDOL asserts that "no theoretical or empirical basis" has been shown to verify this and therefore the State unemployment rate cannot be changed. Both groups agree that the Dade County unemployment rate is presently incorrect due to the method used by DLES to extrapolate county rates from the statewide rate. USDOL feels that the unemployed refugees are being spread over all county rates rather than shown in the counties where they actually reside, and recommends that DLES increase the Dade County rate and proportionately decrease the other county rates thereby not diluting the statewide rate. DLES contends that since they do not believe the refugees are included in the statewide rate, this would lower the unemployment rates in other counties below actual levels.

## DATA SOURCES:

- 1) DLES has hired an independent consultant to conduct a statistical analysis of the data to determine if the refugees are included. A draft has been prepared and reviewed by OPB and the Office of Revenue and Economic Analysis. The consultant's preliminary findings are that the refugees are not included.
- 2) The South Florida Employment and Training Consortium (SFETC) is conducting a follow up review of the households in the Dade County USDOL survey to determine the actual percentage of refugees included. They will submit a report to OPB in January.

## Dade County Unemployment Rate

	7/80	8/80	9/80	10/80	11/80	12/80
Reported	7.3	6.6	7.1	7.3	5.8	5.3
Atypical	12.1	10.9	11.2	11.5	8.9	7.8

## STATE OF COLORADO

## EXECUTIVE CHAMBERS

18 State Capitol  
Denver, Colorado 80203  
Phone (303) 866-2471



March 23, 1983

Richard D. Lamm  
Governor

The Honorable Romano Mazzoli  
Subcommittee on Immigration,  
Reform and International Law  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Last year I was a strong supporter of the passage of the Simpson/Mazzoli Immigration Reform and Control Act. This year I again support passage of the Simpson/Mazzoli bill, S. 529/H.R. 1510.

Immigration is one of the most important issues facing the United States today -- and one of the most difficult. None of us wants to be associated with the racist impulses that sparked immigration laws at the turn of this century, and none of us wants to be the one who tells millions of people around the world that their aspirations to come to the United States will go unfulfilled.

Yet without immigration reform legislation, the immigration problem will not go away, no matter how hard we hope. We must face this difficult issue squarely, analyze the problems clearly and without wishful thinking, and we must develop and implement the difficult and sometimes wrenching solutions.

That is why I appreciate your leadership, Mr. Chairman, and that of Senator Alan Simpson, and Chairman Peter Rodino. You and the members of your subcommittee have the courage to face this tough issue, and propose solutions that will work.

Immigration is a part of the glorious traditions of this country. Uncontrolled immigration, on the other hand, is part of many of our national problems.

Immigration today makes up half of our population growth, adding more than a million people each year to our population. In less than fifty years, our population will grow to over 330,000,000, with most of the increase coming from immigration.

Uncontrolled immigration complicates the solution to many of our most difficult problems. In my part of the country, we have a great deal of land, so some people believe that we can support many people. Unfortunately, we can't; our land is extremely fragile and our resources stretched thin. We don't have the water to support more people; our water supplies are dependent on our ability to capture the winter snows. We don't have an unlimited supply of food, agricultural land, energy or other resources.



We are probably beyond the carrying capacity of our land and resources today. We cannot add more people without suffering irreparable environmental degradation.

Immigration is the component of population growth over which we have the most control. Uncontrolled immigration is, therefore, a loss of control over our population growth and, ultimately, over our future.

These are some of the reasons why I support your bill, Mr. Chairman. I believe that we must act swiftly to regain control of immigration to the United States. Your bill is not perfect, but it offers us a beginning, a starting point.

We have more than 11,000,000 Americans out of work today, with no real sign that the number of unemployed will diminish rapidly. The Judiciary Committee rarely has a chance to act directly to ease the plight of the unemployed, but in the Simpson/Mazzoli bill, you can, and should, act to help America's unemployed.

H.R. 1510, if passed in a strong and effective form, will put Americans back to work. It will save billions of dollars for the Federal Treasury in costs associated with unemployment. And, perhaps as important, the passage of H.R. 1510 will reaffirm this nation's tradition as a generous and compassionate nation, but in a way which demonstrates that we cannot admit every person who would like to come to this country.

The core of H.R. 1510 is the prohibitions against hiring an illegal immigrant, known popularly as "employer sanctions". There is no other proposal for immigration legislation which will have such an impact on the flow of immigrants to the United States.

The American people, in one public opinion poll after another, support employer sanctions. Three-quarters of the respondents in one Roper Poll supported employer sanctions. In a poll by the National Federation of Independent Businesses, the small business lobby, two-thirds of the small businessmen polled supported employer sanctions. In a poll of Hispanic-Americans by Senator Lloyd Bentsen, almost two-thirds of Hispanic Texans supported employer sanctions.

Just two weeks ago, the AFL-CIO reiterated its historical strong support for employer sanctions. The Executive Council of the AFL-CIO passed a resolution calling for:

(A) legislative prohibition on the employment of undocumented workers. This must be accompanied by an efficient enforcement system providing for sanctions of sufficient severity against employers of undocumented workers -- including injunctions -- to deter violators, and

for private legal action where the government fails to act. Essential to workable and fair sanctions against employers is a system for verification of the identity of job applicants that will demonstrate the individual's legal entitlement to work, that is limited in use to this sole purpose and that is secure and forgery proof.

Mr. Chairman, I agree with all of these observers:

the single most vital part of any immigration reform bill is employer sanctions.

Employer sanctions are important for a political reason as well as for the substantive need to control illegal immigration. No immigration reform bill can pass through Congress without an employer sanctions provision, particularly one which contains a program to legalize the status of millions of illegal immigrants. If there is no employer sanctions provision, Congress will not pass an amnesty program.

We must be vigilant, however, in guarding against proposals to amend H.R. 1510 in a way that will gut the effectiveness of employer sanctions. Some of these proposals are couched in language decrying potential discrimination of burdens on employers. The provisions in H.R. 1510 are less stringent than I would like; I don't, for example, see the need for both an extended warning and educational period and then a penalty structure which requires a citation for the first offense, no matter how egregious. I believe that every employer should be required to verify the eligibility to work of all job applicants.

But I stress my concern, Mr. Chairman, that the employer sanctions provisions in H.R. 1510 must not be weakened further. As a lawyer, I recognize the dangers, legal and practical, of restricting coverage under employer sanctions to only a few employers, and not others. As an American, I join with most of the American people in wanting a system that is effective in stopping illegal immigration. H.R. 1510 must have realistic penalties, complete coverage, and a realistic structure.

We cannot forget two other parts of an immigration reform package which must accompany employer sanctions: verification and enforcement.

Verification of a job applicant's eligibility to accept employment is not necessary for the efficient functioning of an employer sanctions system. Verification is, however, necessary to protect two groups: employers, who want an easy and reliable means to avoid erroneous governmental prosecution; and American minority workers, who want to avoid any heightened suspicion by employers who don't want to violate

the prohibition against hiring illegal immigrants. A verification system, such as the inexpensive and reliable electronic verification system, known as the "call-in" system, will be a valuable part of any employer sanctions program. H.R. 1510 provides a three-year period during which the President will develop a new verification system, with special consideration for the call-in system.

Some observers claim that any verification system would inevitably lead to a national identity card. I disagree. The call-in system, for example, uses no new information (only the Social Security number) and doesn't even require a card. Other proposals use only a Social Security card, already in general use.

More to the point, the Simpson/Mazzoli bill contains more stringent safeguards against misuse of verification information than the federal Privacy Act; there is no "routine use" exemption for use of the information by other agencies, in fact, such other use is explicitly proscribed. The vigilance of the American people in resisting any form of national identification, combined with these legislative safeguards, will stop any proposal for a national identification card.

Enforcement of any law is necessary for the attainment of the goals of the bill's proponents. H.R. 1510 contains many new proposals, including employer sanctions, which will require additional levels of enforcement by the Immigration and Naturalization Service. INS does not currently have the ability to provide additional enforcement without further authorization and appropriations.

H.R. 1510 contains some generalized language about enforcement authorization. The Senate Subcommittee is considering an increase in authorization for the INS of about \$200,000,000. This would be an adequate increase for all of the new programs in H.R. 1510. I urge you and the subcommittee, Mr. Chairman, to amend H.R. 1510 to include an explicit authorization for additional enforcement.

Before leaving this discussion of employer sanctions, Mr. Chairman, I would like to point out the alternative to enacting sanctions in some effective form. If we do not enact a practical and workable employer sanctions program, we are setting the stage for substantial increases in traditional, intrusive methods of immigration law enforcement. Immigration criminal investigators will continue to seek illegal immigrants in workplaces and on streets, diligently carrying out their duty to protect American workers from foreign competition.

This kind of enforcement, without employer sanctions, is inherently more burdensome to employers, and may result in discrimination against minority workers in forms more dangerous than any predicted as a result of employer sanctions. This is the status quo, Mr. Chairman,

and I posit that the status quo is not a situation which the American people will tolerate for long. Business organizations and minority group representatives who object to employer sanctions without offering constructive proposals as substitutes, are not serving their communities of interest well.

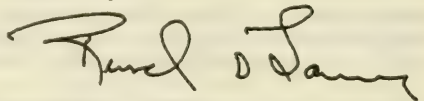
Of course, H.R. 1510 is a comprehensive immigration reform package; it must contain some provisions for controlling legal immigration. As you know, I have long believed that we must have some limit or ceiling on legal immigration. I was pleased to see that the Simpson/Mazzoli bill, as introduced, had a generous and flexible ceiling on legal immigration. The current Senate version of the bill, S. 529, retains that ceiling, although H.R. 1510 does not.

The ceiling on legal immigration proposed in the Senate bill is generous and flexible, in the finest traditions of American immigration history. The ceiling would not restrict the entry of immediate family of U.S. citizens, nor the entry of refugees. The level of admissions authorized under the ceiling is greater than the admissions of all other countries of the world combined.

Just as resistance to employer sanctions will result in more severe problems in the future, opposition to the concept of a flexible and generous ceiling such as that proposed in the Simpson/Mazzoli bill is equally short-sighted. The American people want legal immigration controlled at a level consistent with our national resources. To do otherwise increases the risk of a backlash against all immigration and all immigrants. That backlash would shut the door completely to immigration, generous or otherwise. By far the better alternative is to establish a generous ceiling now, while we have the time to be generous, before the restlessness of the American people turns to wholesale resentment. The ceiling proposal is a good one and I urge the subcommittee to restore the ceiling on legal immigration to H.R. 1510.

I am happy, Mr. Chairman, to support H.R. 1510. I hope that Chairman Rodino will continue his tradition of leadership on this issue by moving swiftly to bring this bill to the full House.

Sincerely,



Richard D. Lamm  
Governor



ASIAN AMERICAN  
LEGAL DEFENSE AND  
EDUCATION FUND

350 BROADWAY • SUITE 308 • NEW YORK N.Y. 10013 • (212) 966-5932

March 23, 1983

The Honorable Romano L. Mazzoli  
U.S. House of Representatives  
Washington, DC 20515


Dear Mr. Mazzoli:

Enclosed please find the statement of the Asian American Legal Defense and Education Fund (AALDEF) and the joint statement from eighteen Asian American organizations in New York City on the Simpson-Mazzoli Bill.

AALDEF is the only organization on the East Coast that specifically addresses the legal issues concerning Asian American communities.

While we fully support a fair and general legalization provision of the bill, we strongly oppose other aspects of the bill. As indicated by the attached joint statement, our views are shared by other Asian American organizations with large and diverse constituencies. We hope that these concerns are seriously considered by you. Please contact me if you have any questions regarding our positions. Thank you for your consideration.

Sincerely,

  
Sook Nam Choo  
Staff Attorney

# ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

350 BROADWAY • SUITE 308 • NEW YORK N.Y. 10013 • (212) 966-5932

## STATEMENT OF THE ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND

### ON THE

### IMMIGRATION REFORM AND CONTROL ACT OF 1983 (S. 529 and H.R. 1510)

The Asian American Legal Defense and Education Fund (AALDEF) is a non-profit organization founded in 1974 to address the unique legal needs of Asian American communities. Through its programs of impact litigation and community education, AALDEF educates Asian Americans about their legal rights and conducts litigation that will guarantee equality and full participation to Asian Americans in all aspects of our society.

Discrimination against Asian Americans has historically been linked to the enactment of immigration laws directed specifically at Asians because of their race and national origin. Therefore, AALDEF has maintained a special concern about the content and implementation of our immigration laws. The social and economic well-being of Asian Americans, and of all people, depends upon a more equitable and enlightened immigration system.

Although we were very pleased to learn that the House Judiciary Committee version of the bill retained the fifth preference category and lifted the limitation on the second preference category, certain aspects of the bill still cause undue hardship upon Asian immigrants and their families, without achieving an effective resolution of the immigration problems that affect this country. The following are some of the urgent concerns about the Simpson-Mazzoli Bill that affect our constituents in Asian American communities.

#### Employer Sanctions

Based on AALDEF's substantial experience in employment and labor rights issues, we can well understand the desire to curb unlawful employment practices, such as an employer's failure to pay minimum wage and provide decent working conditions. Nonetheless we are convinced that employer sanctions would be ineffective in deterring the employment of undocumented aliens or preventing employment abuses. Instead, such a provision would seriously infringe upon the protected rights of all workers, especially Asians and other minorities. It is AALDEF's position that illegal employment practices must be fought with more conscientious and vigorous enforcement of existing fair labor standards laws.

This provision would impose immense difficulties of enforcement. Those agencies already charged with the enforcement of wage and hour standards are presently unable to effectively deter violations of existing labor laws. It is difficult to imagine the Immigration and Naturalization Service with any significant capability to monitor and remedy illegal employment practices. Enforcement at best would be selective and would be unlikely to have any widespread deterrent effect.

In addition, Asians and other racial minorities, regardless of immigration status, will also face the likelihood of increased employment discrimination at the hands of honest employers seeking to avoid liability under the proposed sanctions. Moreover, unscrupulous employers will be able to use this provision as a pretext for refusing to hire workers because of their race, ethnicity or political opinion.

#### Worker Identification System

AALDEF is opposed to any form of compulsory work permit or identification card system. We vigorously join with other organizations and individuals who have pointed to the potential civil liberties violations and possible abuses that such a system would inevitably create.

#### Legalization Provisions

The Legalization Program under the bill would provide a limited Amnesty to those individuals who enter the United States before January 1, 1977, and it would further allow a temporary resident status to those individuals who enter the United States before January 1, 1980. AALDEF believes that the Legalization Program, while certainly a gesture in the right direction, should be more liberalized to include all undocumented aliens in this country as of January 1, 1982.

In addition, all undocumented persons eligible for legalization should be granted permanent resident status, and temporary resident provisions of the bill should be deleted. The creation of a temporary resident alien status for undocumented workers would encourage some unscrupulous employers and individuals to exploit and treat temporary resident aliens unfairly.

#### Conclusion

AALDEF believes that these aspects of the bill fail to reflect the standards of humane and equitable immigration policy that would genuinely serve our national interest. AALDEF urges that the concerns we have expressed on behalf of Asian American communities be given serious consideration.

STATEMENT OF ASIAN AMERICAN ORGANIZATIONS IN NEW YORK CITY  
ON THE SIMPSON-MAZZOLI BILL

We, the undersigned, represent various Asian American organizations in New York City. We are writing this statement to urge each member of Congress to oppose the Simpson-Mazzoli bill.

We have maintained a special concern about the bill since discrimination against Asians has historically been linked to the enactment of immigration laws directed specifically at Asians. We believe that many aspects of the bill will cause undue hardship upon Asian immigrants and their families, without achieving an effective resolution of the immigration problems that affect this country.

We strongly oppose the elimination of the fifth preference. The abolition of the fifth preference would most seriously affect Asians. This is quite clear since the current backlogs in the fifth preference petitions are most pronounced among petitioners from Asian countries.

The employer sanctions provision will seriously infringe upon the protected rights of all workers, especially Asians and other minorities. Besides its doubtful effectiveness, this provision can be used as a pretext for refusing to hire people who look "foreign" or speak with an accent.

Additionally, we are opposed to any form of compulsory work permit or national identification card system. We vigorously join with other organizations and individuals who have pointed to the potential civil liberties violations and possible abuses that such a system would inevitably create.

Moreover, the proposed legalization program under the bill, while certainly a gesture in the right direction, would deny legal status for many undocumented workers. The legalization program should be liberalized to include all undocumented workers who enter before January 1, 1982.

Lastly, we are opposed to the expansion of the present H-2 temporary workers program. The massive importation of temporary workers would create a subclass of low-paid workers without democratic rights.

These and other provisions of the bill will make sweeping changes to our immigration policy. The many potentially harmful consequences of these changes should be carefully considered before any drastic changes in our immigration laws are made. We strongly urge each member of Congress to oppose the bill so that this very large complex piece of legislation receives much more extended deliberation in all of its aspects.

Sincerely,



Asian American Legal Defense & Education Fund  
Chinatown History Project  
Chinatown Planning Council  
Korean Women's Association of Greater New York  
Korean YWCA  
Japanese American Social Services  
Community Developers - Chinese United Methodist Church  
First Chinese Presbyterian Community Affairs -  
Home Attendant Corp  
New York Chinatown Senior Citizen Coalition Center  
Chinatown Family Consultation Center  
Organization of Asian Women  
New York Independant Committee to Free Chol Soo Lee  
Asian Women United  
National Korean American Parents Council  
Asian Education & Welfare Inc.  
Asian American Counseling & Treatment Center  
Korean American Association of New York  
Korean American Senior Citizen's Society

FAIR

ADDITIONAL INFORMATION REQUESTED FOR THE RECORD FROM  
THE FEDERATION FOR AMERICAN IMMIGRATION REFORM

EXPERIENCE WITH INEFFECTIVE AND REPEATED AMNESTIES IN OTHER COUNTRIES

Analysis by the Federation for American Immigration Reform of the experiences of other countries which have offered amnesty to illegal immigrants supports the statements offered by Dr. Graham. Industrialized countries which have made extremely generous offers of legalization of status have found that illegal immigrants did not accept the offer. Amnesties were often repeated only a few years after the original "one-time" legalization program expired.

On December 1, 1982, a fourteen-month plan to regularize the status of illegal immigrants in France was completed. Aliens who entered France illegally between 1974 (when French borders were closed to foreign workers) and 1981 were eligible. According to the Associated Press, an estimated 300,000 illegal immigrants were eligible. Since the amnesty began in October 1981, about 150,000 aliens have come forward for legalization; 50% of those eligible. 130,000 of the aliens were granted legalization. The Federations in Solidarity with Immigrant Workers, a pro-immigrant organization, organized a month-long hunger strike in Paris which forced the Socialist government to re-open the cases of the 20,000 aliens denied legalization.

Other nations' experiences have been little more successful. In Canada, a private advisory board has just recommended that Canada hold another amnesty, not long after the end of its last amnesty. In Australia, the amnesty granted in late 1980 was the third that country has held, and Immigration Minister Ian Macphie declared it would be the last: "We'd be making a mockery of immigration policy if every few years we had an amnesty."

If the experience of other countries is any indication, we can expect that

the legalization proposed in H.R. 1510 will not be the last the United States provides. After all, this would not be our first amnesty program; we have given amnesty twice since the passage of the Immigration and Nationality Act (we have twice granted legalization to illegal aliens through the registry process of section 249 of the Immigration and Nationality Act, in 1952 and 1965).

COOPERATION BETWEEN IMMIGRATION OFFICERS AND STATE AND LOCAL LAW ENFORCEMENT  
OFFICERS AND AGENCIES.

The Federation for American Immigration Reform fully supports cooperation between state and local law enforcement officials and the Immigration and Naturalization Service (INS). We supported the amendment of Senator Charles Grassley in 1982, and are pleased to see the Department of Justice reverse the 1978 directive of then-Attorney General Griffin Bell.

The new directive reiterates the Department's traditional position that cooperation between federal, state, and local law enforcement officers is a desirable mode of operation in a time of budget constriction. We wish the Department had proposed more assistance to local and state law enforcement agencies by providing training and liaison activities. Instead, the Department provides only policy guidance.

ENFORCEMENT RESOURCES NEEDED BY THE IMMIGRATION AND NATURALIZATION SERVICE

In response to Mr. Smith's question and to the Committee's concerns, the Federation for American Immigration Reform is pleased to present its views on

the specific budgetary needs for the Immigration and Naturalization Service. We strongly support increased appropriations for immigration law enforcement, adjudications and service functions of the INS.

In 1980, in cooperation with the Border Patrol Supervisors Association, FAIR conducted a survey of Border Patrol needs. The report found that the most effective enforcement efforts which made budgetary sense would stop between 90% and 95% of all illegal entries, either through apprehension or deterrence of the attempt. This level of effectiveness could have been achieved in 1978-79 through the implementation of the so-called "enforcement plan" prepared by the INS, but suppressed by then-Commissioner Leonel Castillo.

The 1980 FAIR/Border Patrol Supervisors Association report was an attempt to keep the assessment of enforcement needs current. FAIR is currently updating the enforcement plan. We expect the up-dated report to be available in April or May of this year, and will be happy to supply a copy to the committee at that time.

The 1980 report found that the 90-95% effectiveness level could be achieved by an additional expenditure of \$122 million. This expenditure would have provided a increase of 3,600 new Border Patrol officers, support positions, and equipment. This increase would have meant a total Border Patrol force of 5,700 officers, far smaller than some urban police departments

The report made specific recommendations, based on Border Patrol sector chief suggestions, as to where the new resources should be placed. In addition, the report, recognizing the limitations of the Border Patrol's ability to absorb and train new personnel, recommended implementing the increase over three years.

We enclose a copy of a synopsis of the 1980 report. It is our understanding that the full text of the report, with appendices, was made available to the committee at a hearing on the authorization level of the INS.

The report does not include the recommendations of the Federation for



American Immigration Reform as to the appropriate increases in funding for other enforcement, adjudications, and service functions of the INS. These recommendations will be included in our next report, as will our comments on the Administration's requested authorization, as you requested. However, we can say at this time that our request for authorization for the INS will undoubtedly exceed that proposed by the Administration, as will our suggestions for enhanced revenue from immigration services.

CONSIDERATION OF NEW IMMIGRATION AND NATURALIZATION SERVICE PROPOSALS FOR  
ADJUDICATION OF PETITIONS FOR LEGALIZATION.

As the Chairman requested, the Federation for American Immigration Reform has examined more recent documents of the Immigration and Naturalization Service regarding the administration of the proposed legalization program in H.R. 1510.

The INS documents which we examined and which were referenced in our testimony specifically noted that only some applicants for legalization would receive a personal interview with an INS officer. Consequently, some applicants for legalization would receive permanent residence without ever seeing an immigration officer, and only after an interview with a representative of an agency which might have opposed some or all of the restrictions on eligibility for legalization.

The newer INS documents, following our testimony, have been amended to require a face-to-face, personal interview of every applicant for legalization. In addition, we have been assured that our concerns about the apparent lack of oversight by INS officers of legalization processing will be addressed; the INS will consult with us on their new plans.

These improvements are most welcome. Even with these changes, however, we

still have serious concerns about the legalization program in H.R. 1510. We appreciate the assistance of committee members in communicating our concern to the INS and we appreciate their improvements in proposals for legalization administration.



## FEDERATION for AMERICAN IMMIGRATION REFORM

2028 P Street, NW

Washington, DC 20036 (202) 785-3474

CONTROLLING ILLEGAL IMMIGRATION AT THE BORDERS

How much would it cost to stop most illegal immigration? Can we regain control of our nation's borders?

These two startling questions are a result of many years of questioning the ability of the Immigration and Naturalization Service, through the Border Patrol, to apprehend or deter illegal crossings of the borders. As early as the 1950's, immigration experts were saying that "sealing" the borders would require substantial forces of either troops or Border Patrol officers. Former Commissioner of the INS, Leonard Chapman, a strong advocate of major enforcement efforts, once told a Congressional Committee that "sealing" the border would require as much as a division of troops. And an unpublished anonymous Congressional report cited in a recent New York Times Magazine story - and, according to Congressional sources, unavailable to anyone - said that "sealing" the borders would require doubling the armed forces with all the additional soldiery stationed on the borders.

Yet "sealing" the borders and controlling illegal immigration are not the same thing. We can have virtually absolute control over illegal immigration without "sealing" the borders. A new study by the Border Patrol Supervisors Association, at the request of the Federation for American Immigration Reform (FAIR), shows that we can control illegal immigration relatively easily and inexpensively.

The report found that the Border Patrol is capable of apprehending or deterring between 90 and 95% of all illegal border crossings by adding only 3,600 new agents, at a total cost of about \$122,000,000. The present Border Patrol has only 2,101 agents, and Border Patrol Supervisors estimate that they are only 33 to 50% effective at preventing illegal border crossings.

### The Problem

The number of illegal border crossings is enormous, and growing each year. The Border Patrol made 879,566 apprehensions in the last fiscal year. Yet, at any one time, only about 350 officers are on duty at all our borders because of lack of adequate staffing. So, by any measure, Border Patrol agents face a huge task, and are very effective on a per-person basis.

The report estimates that with present Border Patrol effectiveness of between 33 and 50%, approximately one to two persons successfully entered the country for each person apprehended. Thus, between 875,000 and 1,750,000 persons entered the country illegally during the last fiscal year.

March, 1980

**BOARD OF DIRECTORS:** JOHN TANTON, Chairman; SHARON BARNES, OTIS GRAHAM, WILLIAM PADDOCK, SIDNEY SWENSRUD; ROGER CONNER, Executive Director

The sector chiefs were asked: What additional resources in officers, support personnel, and equipment, would your sector need to become 90 to 95% effective?

Effectiveness was defined as the ability to either apprehend or deter an illegal border crosser. The level of effectiveness the sector chiefs used as a target was "90-95%," that is, 90 to 95 out of 100 illegal border crossings. The association felt that 90 to 95% effectiveness was sufficient to be considered "control" of the borders.

Needs were divided into three categories: additional officers, additional support personnel, and additional equipment. Officers are the personnel who actually conduct searches, apprehensions and most service to the public. Support personnel include mechanics, clerks, communications technicians, computer and sensor system analysts, and other positions needed to maintain the officers' productivity. Equipment included vehicles, aircraft, helicopters, communications and sensor equipment, and other equipment needed for effective service.

Cost and other data were adjusted for federal budget cycles and contract procedures.

#### Findings

The report found that all sectors requested a total of: an additional 3,500 officers, with an approximate first-year cost of \$87,500,000; an additional 350 support personnel, with a cost of \$5,950,000; and additional equipment; including vehicles, aircraft, communications and sensor equipment; costing about \$29,131,000. Total estimated cost was \$122,581,000.

The Border Patrol, however, is not equipped to handle such an increase at one time. Training facilities have an annual capacity of about 1,200 persons. Therefore, the association suggested phasing in the additional resources over a period of a few years. The resources which would be added should be directed to the areas with the most need, all of which are on the U.S.-Mexican border, and which include the "hot spots" in which most illegal border crossings occur.

The association suggests a method to determine the appropriate coverage in a sector, using a computer system developed recently by the INS Research and Development division. The Border Patrol has found that as apprehensions increase in an area, an increase is also found in the number of persons deterred from crossing in that area. At a certain point, when enough people are deterred from crossing in that area,



The report bases this estimate on three inter-locking measures:

unanswered sensor reports - electronic monitoring systems (sensors) are used to monitor wide geographic areas without the need for additional personnel. This measure of crossings is adjusted for the reliability of the sensor systems, and shows the number of activations of sensor systems which could not be answered by Border Patrol officers, or which did not result in an apprehension where corroborative evidence of crossings were discovered;

physical unlocated "sign" reports - in areas without sensor systems, the Border Patrol uses an older method of detecting crossings. This method involves large areas of smoothly-graded sand or dirt. Movement across these areas leaves evidence of crossings, or "signs." These reports are for "signs" which have been discovered, but for which no person has been apprehended;

"got away reports" - apprehension statements from investigators in the interior of the United States - often when an illegal immigrant is apprehended in the interior of the United States, he or she will describe the location of his or her entry into the country. Although occasionally duplicating the prior measures, this figure can be used to corroborate some of the earlier estimates.

Given the enormity of the border crossings, and the length of the borders (1950 miles on the U.S.-Mexico border alone), stories about requiring an army to "seal" the borders are understandable. Two-thirds of all illegal border crossings, however, are across only about 90 miles of border, in two sectors of Border Patrol coverage: Chula Vista, California (near San Diego), and El Paso, Texas. Most of the land elsewhere along the border is not easy to cross, and is frequently inhospitable. In addition, it is possible to monitor most of this area electronically or by air. Thus, the Border Patrol can, with additional personnel and monitoring equipment, detect and deter most illegal border crossings even over the long border in the Southwest.

#### Methodology

The report was conducted for FAIR by the Border Patrol Supervisors Association, the national organization of Border Patrol supervisory and management personnel, in February and March of this year. The association surveyed the sector chiefs in each of the Border Patrol sectors around the country.

apprehensions will then begin to decrease. The association suggests that the optimal coverage rate is reached when the apprehension rate shows a sharp decline. At that point, the association suggests that additional resources be diverted to other areas for a more efficient use of resources. According to the association, the INS Research and Development division computer program could indicate accurately when each of these points on the apprehension efficiency curve is reached.

#### Significance

The report shows clearly what the Border Patrol supervisors think is required for control of the borders. The data was gathered from officers in the field by those in constant touch with the problem. These experts say not only that control of the borders is within reach, but also that effective control would require an increase of less than a third in the overall INS budget, which is only a few per cent in the Department of Justice budget.

We do not need to create a new army of officers to patrol the borders in order to protect our country from illegal immigration. We need only increase the Border Patrol to a total of about 5,800 officers, a modest force to perform a huge task, smaller than the police force for the state of Kansas. Since over 250,000,000 people enter the country each year, most through ports of entry, the total work force of the Border Patrol would be only 0.002% of the total INS workload.



# American Hotel & Motel Association

1101 CONNECTICUT AVENUE, N.W. ★ SUITE 1006 ★ WASHINGTON, DC 20036  
(202) 223-6872

LAWRENCE T. GRAHAM  
Deputy

ALBERT L. McDERMOTT  
Washington Representative

March 15, 1983

CECILIA A. KIRBY  
Assistant

The Honorable Romano Mazzoli  
Chairman, Subcommittee on Immigration,  
Refugees and International Law  
House Judiciary Committee  
U. S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I would like to express to you the views of the American Hotel & Motel Association on the illegal alien situation.

The American Hotel & Motel Association is a federation of hotel and motel associations located in the fifty states, the District of Columbia, Puerto Rico and the Virgin Islands, having a membership in excess of 8,200 hotels and motels accounting for over one million rentable rooms. The American Hotel & Motel Association maintains offices at 888 Seventh Avenue, New York City and at 1101 Connecticut Avenue, NW, Washington, DC. Inclusive in our membership are all of the major hotel and motel chains.

Illegal alien legislation and Administration proposals have concerned our industry for some time. We are a diverse industry and a majority of our hotel/motel operators are small businessmen; but, we have numerous types of management and ownership: large chains, independent franchises, small "mom and pop" hotels, motels and inns. We are also a labor-intensive industry and are one of the largest employers of minority workers.

In addition, since our businesses provide a myriad of services to our customers: food, lodging, recreation, business facilities, etc., we are faced with innumerable federal and state government regulations. We must be closely aware of all laws and regulations involving food service, health and safety, the environment, wage and hour, equal employment, age and sex discrimination, taxes on rooms, beverages and meals, in addition to all types of corporate and business taxes, not to mention the complicated, common-law based laws that rule our industry: the laws of innkeeping.

Our concern with the pending proposals is that they will add to the staggering list of laws and regulations with which we must comply and that they will force us to do what the Immigration and Naturalization Service is mandated to do: determine whether a person is an illegal alien. As we stated, we hire a considerable number of minority workers. Are we to determine which have entered the country legally and which have legal work status?

We do not approve of the knowing hiring of illegal aliens; and we believe that our operators do not knowingly hire such aliens. We do realize that there is a problem in this country with the influx of illegal aliens and it is a problem that is extremely difficult to solve. We oppose any kind of national identity card, or any type of identification procedure that hints of police-state tactics. We just do not believe, however, that since the Federal Government is having difficulty solving this problem, that the primary responsibility should therefore be shifted to employers.

There are, as you undoubtedly know, Federal agencies that have difficulty in ascertaining who of their beneficiaries are legally entitled to receive benefits. There are reports of illegal aliens receiving social security benefits, welfare payments, food-stamps and the like. Since these benefits act as inducements for illegal aliens to enter and work here, the Federal agencies responsible should begin to correct that situation rather than Congress just relying on the hope that new laws affecting employers will cure the illegal alien problem.

The danger with legislation such as Section 101 of S. 529 and H.R. 1510 is that it tends to sweep into its purview innocent employers who have no intention of violating the law. All hotel and motel operators should not be required to conduct constant investigations into the citizenship and legal work status of present and prospective employees just because there may be a few unscrupulous businessmen who may be involved in the "pattern and practice" of hiring illegal aliens.

The practical application of the proposed law is obvious. Employers would be required to ask for documentation of citizenship, and, in general, they would tend to ask for such documentation from those people who "appeared" to be of foreign origin. Such a practice could be discriminatory and could subject our operators to all types of litigation.

The documentation and information the employer must review should be simple to peruse, yet difficult to forge. A reasonable solution might be to require that everyone who works have a social security card, and such card could only be obtained if a person is a citizen or a legal alien with a proper work visa. It would place the legal burden, appropriately, on the Immigration and Naturalization Service and require INS to ensure that



such cards do not fall into the hands of illegal aliens. Whatever form the law takes, it should not have a chilling effect on the employer's ability or desire to hire minority group individuals. It should be kept in mind that many citizens and legal aliens do not have proper personal identification--birth certificates, etc. An employer must not be encouraged by law or regulations to dismiss or not consider the application of foreign looking employees simply because of inadequate documentation.

In summary, what concerns us primarily is, of course, the whole notion of employer sanctions. While we agree, that unscrupulous employers knowingly engaged in a pattern and practice of hiring illegal aliens should be sanctioned under the law, we feel that any such legislation should be narrowly drawn and carefully applied. For example, many employers not clearly understanding the details of the law and just knowing that there is a law against the hiring of illegal aliens might be overcautious out of fear of becoming involved in litigation. Overcaution could lead them into inadvertent discrimination, and discrimination could lead to further litigation.

We are in favor of the type of voluntary cooperation that the Department of Justice was seeking at one time and, as a trade association, we would be glad to help in this endeavor. Perhaps, programs like "Operation Cooperation" should be expanded first to see how effective voluntary cooperation could be which would, thereby, negate any need for employer sanctions.

We, as employers, are not opposed to some form of illegal alien legislation as long as it focuses on the clearly unscrupulous employer and not on the occasional inadvertent hiring of an illegal alien. We are against a universal worker card but we would not be against asking for a driver's license, social security card, etc.

We do agree with you that the problem needs to be addressed and we are not in opposition to all sections of the bill. In fact, we have historically favored visa waiver legislation, and thereby support the adoption of the visa provision (Sec. 213). It is our belief that present visa requirements are outmoded and are a deterrent to foreign travel to the U. S. The trial program authorized by Section 213 is at least a starting point for the U. S. to become competitive in the world travel market.

It is our hope that we can work together to find appropriate responses to the many questions raised by the Immigration Reform and Control Act of 1983.

Sincerely,

*Albert L. McDermott*  
Albert L. McDermott  
Washington Representative

ALM/bjl

NATIONAL  
RESTAURANT  
ASSOCIATION

March 17, 1983

Honorable Roman Mazzoli  
Chairman  
Subcommittee on Immigration  
House Committee on the Judiciary  
2137 Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

Enclosed you will find comments of the National Restaurant Association on your proposed legislation, H.R. 1510 -- the Immigration Reform and Control Act of 1983.

Would you please have these comments included in the record of your hearings held March 1-16, 1983.

Sincerely yours,

  
Robert Neville  
Executive Vice President

RN/mr

Enclosure

cc: Honorable Hamilton Fish  
Subcommittee on Immigration

STATEMENT OF THE NATIONAL RESTAURANT ASSOCIATION  
ON THE IMMIGRATION REFORM AND CONTROL ACT OF 1983

The National Restaurant Association is a non-profit trade association with headquarters in Washington, D.C. It offers programs in public affairs, education and research to its 10,000 members, who operate more than 100,000 foodservice establishments.

We appreciate the opportunity to comment on the proposed Immigration Reform and Control Act. Twice last year we testified on the problem of undocumented foreign workers, and since our members are likely to be greatly impacted by any such legislation, our interests in the subject remain high.

The question of immigration control is, of course, a matter of public policy and we wish to comment only on this legislation insofar as it affects our industry. We do have several concerns which we hope to see addressed by amendments or clarified in report language.

Sec. 274(b)(1) and (3): Forms: Paperwork Burden

First, there is the matter of documents required by this legislation, and the resultant burden on the employer to store and maintain these documents. We suggest that this problem be significantly reduced by authorizing the inclusion of the required attestations within normal employment application forms. Perhaps several short paragraphs at the bottom, so there would be no additional storage problem. If that were possible, and if the language were amended to conform to EEOC requirements to retain documents for two years instead of the proposed five, the paperwork requirements would be a good deal less burdensome.

Form Substitution Problem

What is to assure that the documents INS sees if it should make an investigation are the same ones that the employer verified when the employee was interviewed? Since the employer's liability would appear to be determined by an investigation which could take place some time after the interview, we are concerned that a judgement could be made based on documents the employer had not even seen.

Counterfeit Documents

NRA wishes to join with those others who have pointed out that this system does not address the problem of counterfeit forms. There is nothing in this legislation that would preclude the use of sophisticated counterfeit forms for the first three years of the program. Although we realize the employer would not be responsible for detection, the fact remains that the problem will still exist and the proposed legislation does nothing to solve the problem.

### Questions of Discrimination

We appreciate that this legislation goes to great lengths to eliminate charges of discrimination by providing that all applicants present the same form of identification. However, we fear an enormous increase in affirmative actions, because employers will know the applicant's country of origin (information they are not currently privy to). There will be many charges of discrimination by those who were not selected for employment or who for legitimate reasons were not considered for promotion.

Additionally there is the fear that employers will clearly be reluctant to hire aliens, and therefore make themselves vulnerable to possible actions under this legislation, when they have an option not to do so.

### GAO Report

We feel very strongly that the GAO Report, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," issued on August 21, 1982, needs to be more strongly acknowledged and its message heeded. Clearly, employer sanctions do not work as a deterrent to illegal immigration.

### Summary

The foodservice industry remains concerned about the use of employer sanctions to curb illegal immigration. Clearly the authors of this legislation consider employer sanctions vital to its success, even though the study done by GAO at Senator Simpson's request concludes otherwise. Heedful of the many long hours and months that have gone into its drafting, we nevertheless feel constrained to point out that there are many unanswered questions. As written, this bill presents significant problems to the nation's restaurant industry, and we have attempted to outline them in this communication. These considerations demand to be addressed if this legislation is to be considered a viable solution to this nation's illegal immigration problems.



BARNÉY FRANK  
4TH DISTRICT, MASSACHUSETTS

COMMITTEES  
GOVERNMENT OPERATIONS:

CHAIRMAN,  
SUBCOMMITTEE ON  
MANPOWER AND HOUSING

BANKING, FINANCE, AND  
URBAN AFFAIRS

JUDICIARY  
AGING

**Congress of the United States  
House of Representatives  
Washington, D.C.**

March 22, 1983

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Honorable Romano Mazzoli  
Chairman  
Subcommittee on Immigration, Refugees  
and International Law  
2137 Rayburn HOB  
Washington D.C. 20515

MAR 23 1983

Dear Ron:

The issue of "Treaty Nationals" is an important one which bears a great deal of relevance to the Immigration Reform bill currently pending in the Subcommittee.

I realize the tight hearing schedule precluded the inclusion of hearing from witnesses on this subject. I would, however, appreciate making the statement of Werner J. Fleischmann, which I have enclosed, a part of the official record.

Thank you for your attention to this request.

  
BARNEY FRANK

BF/djc  
Enclosure

STATEMENT OF WERNER J. FLEISCHMANNBEFORE THE SUBCOMMITTEE ON  
IMMIGRATION, REFUGEES AND  
INTERNATIONAL LAW OF THE  
HOUSE JUDICIARY COMMITTEE

98th Congress  
First Session  
March, 1983

I am grateful for the opportunity to submit this Statement in support of the "treaty nationals" amendment to H.R. 1510. This amendment would restore eligibility for U.S. citizenship to permanent resident aliens who have been debarred from citizenship because of the exercise of their treaty right to be exempted from compulsory military service.

Speaking for myself and other permanent resident aliens in my situation, we strongly urge the amendment of the Immigration Reform and Control Act of 1983 to include this legislation. It would, at long last, remove the punitive bar to citizenship imposed on those of us who have done nothing more than exercise our lawful treaty rights. This remedial legislation has already been recommended in the Report of the Staff of the Select Commission on Immigration and Refugee Policy. It has been endorsed by

the Immigration and Naturalization Service. And it is an appropriate element of the legalization provisions of H.R. 1510.

#### The "Treaty Nationals" Problem

My story is probably typical: I came to this country 42 years ago, and have lived here continuously ever since. This is my home. My business is here, my family is here. My wife and my children are all native U.S. citizens. I consider myself a loyal American in every respect -- but, under existing law, I can never become a U.S. citizen.

The reason is that, 41 years ago, I was exempted from compulsory military service in the United States.<sup>\*/</sup>  
I applied for and received my exemption on the basis of

---

<sup>\*/</sup> I was drafted just one year after my arrival in the U.S. At the time, I was on leave from the Swiss Army. I had already served in the Swiss military for two years, and was to remain on active status for four more years. Aware that, as a Swiss citizen, I was subject to imprisonment if I served in any foreign military service, I requested the advice of the Consulate General of Switzerland. I was informed about the Treaty described above and told to request a Form 301 from my draft board and execute it. The execution of that form rendered me permanently ineligible for citizenship, notwithstanding the provisions of Article II of the Treaty.

the 1850 Treaty of Friendship, Commerce and Extradition between the United States and Switzerland, Article II of which provides that "the citizens of one of the two countries, residing or established in the other, shall be free from personal military service . . . ." Unfortunately, Section 315 of the McCarran Act of 1952 debars from citizenship all aliens exempted from military service, regardless of whether the alien was entitled to such an exemption by treaty.

The Existing Law Imposes Severe  
Burdens on Treaty Nationals

As a permanent resident alien who is "ineligible for citizenship," I bear the stigma of an "excludable alien." This puts me in the company of drug addicts, persons convicted of illicit traffic in narcotics, chronic alcoholics, professional beggars, vagrants, prostitutes, anarchists, and others of the kind.

Much worse, however, are the travel restrictions imposed on excludable aliens. Should I leave the United States for business or personal reasons, for even a day, I can be barred from reentry. Thus, unless I secure advance permission from the Immigration and Naturalization



Service to reenter the U.S., I can be turned away at the border -- from my home, my family, my business. That is why permanent resident aliens who are ineligible for citizenship are indeed "permanent" residents -- we cannot leave the United States.

It is not difficult to imagine the hardship that such a restriction imposes. I know other treaty nationals who have had to turn down job opportunities because they would need to travel abroad in their new positions, scientists who have been unable to attend international conferences. For treaty nationals ineligible for citizenship, a family visit outside the United States is nearly impossible. How often we have sought to visit an ailing relative abroad, only to experience the frustrating delays of the ponderous bureaucratic machinery at INS in processing an application for a waiver of inadmissibility.<sup>\*/</sup>

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<sup>\*/</sup> I have been more fortunate than most -- because my business requires numerous trips abroad each year, I have been able to obtain "advance permission to return to unrelinquished domicile" in the U.S. Still, each year or two I am required to resubmit a lengthy application (totalling some 30 pages) along with my fingerprints and a certified check, and go through the process of having my application approved all over again. Approval is never certain, and it is almost always delayed.

Delays of a year and more are routine. As one individual wrote in a letter to me:

"Especially hard are the travel restrictions to live with. It does take a lot of effort to get a reentry permission. The first time I applied for one because my father was very ill I had to secure a report from the Swiss Red Cross to that effect. It then took considerable time and that was after I was here for 18 years. It makes you feel like a prisoner in your chosen country . . . ."

#### The Existing Law Is Unfair

We should not be "punished" for having invoked a right granted to us by treaty. Indeed, as the law stands, I am to be punished in perpetuity for a military exemption granted to me 41 years ago. Even a convicted criminal is eventually forgiven. Yet under the McCarran Act, we would never be forgiven, but would always be forced to suffer the degrading status of an "excludable alien."

#### The Existing Law Imposes Serious Burdens on the INS

I do not know what it costs the United States Government each year to process these applications for waivers of inadmissibility. Whatever the cost -- and it probably is not insubstantial -- it imposes a superfluous burden on an already overburdened INS. Its repeal would

relieve that agency of unnecessary bureaucratic responsibilities and reduce government costs.

To us, certainly, the cost is very substantial -- not just financially, but also emotionally. It is painful to make your home in a country that persistently reminds you that you are an outsider.

The Existing Law Is Inconsistent  
With the International Treaty  
Obligations of the U.S.

Quite apart from the personal toll that the law has taken on me and others in similar circumstances, it would appear that the U.S. law barring treaty nationals from citizenship is inconsistent with the international obligations of the United States. After all, the U.S. has entered into treaties, with such diverse nations as Switzerland, Ireland, Norway, Liberia, Thailand, Yugoslavia, Italy, Spain and Austria, among others, whereby each State grants a reciprocal right to an exemption from military service. Can the U.S. be free subsequently to qualify the military exemption mutually agreed to in the treaty without the concurrence of the other contracting State?

The Government of Switzerland, I know, believes that the bar to citizenship imposed on treaty nationals

exempted from military service constitutes a violation of the U.S.-Swiss Treaty. The Embassy has informed the Department of State that, in the view of the Government of Switzerland, the sanctions imposed by the U.S. amount to a "one-sided alteration of the treaty," and that "punishment for having invoked the treaty" can "hardly be regarded as compatible with a bona fide observance of treaty provisions under international law." The passage of this legislation would eliminate a small but constant irritant in our relations with our treaty partners and demonstrate that the United States is mindful of its treaty obligations.

The Existing Law Has Not  
Been Applied Uniformly

Moreover, these punitive sanctions have been applied inconsistently and haphazardly over the years. The laws, implementing regulations, administrative interpretations, and judicial decisions are rife with conflict. To illustrate the confusing pattern of statutory and administrative immigration and conscription law, I call to the attention of the Subcommittee a document prepared by the Immigration and Naturalization Service entitled "Interpretations," Section 315.5 of which is an annotated summary of the



naturalization law concerning treaty nationals who claim exemption from military service. That document amply demonstrates that the "even hand of the law" has not been applied to treaty nationals who have requested military exemption. <sup>\*/</sup>

The Select Commission and the  
INS Have Supported the Amendment

The law is unfair and ought to be changed. The Report of the Staff of the Select Commission on Immigration and Refugee Policy has already called for this change, in Section 306(a) (3) of its proposed immigration statute. The explanatory section of the Report specifically recommends that this ameliorative provision should be made retroactive, to eliminate the inequity which has already been visited on treaty nationals.

Similarly, when the Immigration and Naturalization Service last considered this legislation (in 1979, when it was part of S. 1763 in the 96th Congress), it, too, endorsed the change in the law.

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<sup>\*/</sup> For example, a treaty national's eligibility for citizenship may hinge on how he notified his local draft board of his status as a treaty national. If he did so orally, he can today be a citizen; if he filled out a Selective Service Form, he is debarred. Likewise, if his local draft board happened to classify him I-A and postponed his induction indefinitely, he can become a citizen; if the board instead classified him IV-C, he is debarred.

The Treaty Nationals Amendment  
Is Consistent With H.R. 1510

The legislative history of the McCarran Act identifies "three classes of persons" that are to be permanently ineligible for citizenship -- deserters, draft dodgers, and aliens exempted from military service. Since that legislation became law in 1952, amnesty has been granted to those who, during the Vietnam War years, refused induction into or deserted from the Armed Forces illegally. Now Title III of H.R. 1510 provides for amnesty -- and ultimately citizenship -- for aliens who entered this country and have resided here illegally. The time has come, I submit, for amnesty to be granted to individuals who merely elected to exercise the rights conferred on them by international treaty in full accordance with the law.

The treaty nationals amendment (a copy of which is attached to this Statement) would accomplish this objective and eliminate a long-standing inequity in the law. It would do so without sacrifice to the public interest. It is consistent with the international commitments of the United States and the policies and purposes of the

Immigration Reform and Control Act of 1983. And it is of overwhelming significance to those of us who have been barred from citizenship in our chosen country.

I strongly urge its enactment.

300 Jacksonville Road  
Pompton Plains, New Jersey 07444

"TREATY NATIONALS"  
AMENDMENT TO H.R. 1510

H.R. 1510 is amended as follows:

Insert a new Section 304 as follows:

"ELIGIBILITY FOR CITIZENSHIP FOR TREATY NATIONALS

"(a) Section 315 of the Immigration and Nationality Act (8 U.S.C. 1426) is amended --

"(1) by striking the period at the end of subsection (a) and inserting in lieu thereof the following: ', except as provided in subsection (c).'; and

"(2) by adding at the end thereof the following new subsection:

"'(c) The provisions of subsection (a) shall not apply to an alien who at the time of applying for exemption or discharge, whether before or after the effective date of this section, was a national of a foreign state with which the United States then had a treaty or international agreement exempting such nationals from military service in the Armed Forces of the United States. This subsection shall have retroactive application to an alien who is or has been debarred from citizenship in accordance with the provisions of subsection (a) above, regardless of whether the petition for naturalization filed by such alien was denied by administrative action of the Immigration and Naturalization Service or by judicial decree.'";

"(b) Subsection (19) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. § 1101 (a)(19)) is amended --

"(1) by striking out ', notwithstanding the provisions of any treaty relating to military service,' after 'means'; and

"(2) by striking ', or was at any time,' after 'an individual who is'."



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SCHOOL OF BUSINESS AND ADMINISTRATIVE SCIENCES  
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March 15, 1983

Congressman Romano Mazzoli, Chairman  
Subcommittee on Immigration, Refugees  
and International Law  
House Judiciary Committee  
2137 Rayburn Building  
Washington, D.C. 20515

Dear Congressman Mazzoli:

I am writing you concerning the immigration reform bill, on which I understand your subcommittee will hold hearings during March. In my capacity as Dean of the School of Business and Administrative Sciences at California State University, Fresno, I wish to express great concern over the provision of the proposed legislation which would force non-U.S. citizens earning business doctorates to return to their home countries for two years. No governmental action would have a more immediate and negative effect on management education in the United States than to restrict the access of business schools to these potential faculty members.

The American Assembly of Collegiate Schools of Business (AACSB), the sole accrediting agency for business schools in the United States, has published a report showing that 20 percent of authorized, tenure-track positions among our 600 member schools are currently vacant. For each anticipated 1983 doctoral graduate, there are six open faculty positions. The gap between doctoral supply and demand has risen steadily in recent years, and has significantly limited the ability of business schools to provide quality education to a steadily increasing pool of traditional students, as well as to practicing managers and business persons seeking to update their skills and knowledge.

The AACSB report further notes that 30 percent of students entering doctoral programs in 1981-82 were non-U.S. citizens. These students could be subject to provisions of the immigration legislation. This figure has since risen to 38 percent. To exclude these individuals from teaching in the United States would aggravate a situation that is already difficult, and would have particular impact on less established institutions with very limited resources to "bid" for the few faculty that are available.

It is extremely rare for AACSB to adopt an official position with respect to any legislation or governmental policy. However, the compelling interests of all business schools in the immigration reform bill have resulted in the AACSB Board of Directors' adopting a resolution calling for the exemption of business doctoral graduates from the requirement that they return home.

I urge you and your colleagues to give serious consideration to the critical faculty needs of business schools in your deliberations.

Sincerely,

A handwritten signature in cursive script, reading "Gene E. Burton". The signature is written in dark ink and is positioned above the typed name and title.

Gene E. Burton  
Dean

jr

Immigration Reform Legislation

## The AACSB Board of Directors:

Noting that 20 percent of authorized doctorally qualified positions in U.S. business schools are vacant during the current academic year;

Noting further that while the absolute number of business doctoral students has declined annually since 1975, the percentage of these individuals who are non-U.S. citizens has grown to more than 30 percent during this period;

Conscious that the training of each doctoral graduate by a business school requires a significant investment of scarce human and financial resources, and that it is therefore appropriate for the nation to benefit from this commitment;

Recognizing that the Immigration Reform Act of 1982, introduced in the 97th Congress, would have required non-U.S. citizens earning doctoral degrees in U.S. universities to return to their home countries for a period of not less than two years;

Mindful that amendments were introduced to the above legislation which would have exempted non-U.S. citizens accepting faculty positions at U.S. universities;

Aware that, although the Immigration Reform Act failed to pass the 97th Congress, similar legislation is likely to be introduced in the 98th Congress;

Believing that any legislation forcing non-U.S. citizens earning doctorates in business to return to their home countries for a stated period of time would have critical implications for business schools and their several constituencies;

1. Resolves that AACSB urge that any new immigration legislation introduced in the 98th Congress should enable non-U.S. doctoral graduates to accept faculty positions in U.S. business schools;

2. Authorizes the appropriate officers and staff as well as the Committee on Faculty Supply and the Governmental Relations Committee to contact key members of Congress in support of this position and to engage in other activities, as appropriate, that call attention to this issue:

3. Recommends that member schools consider writing their representatives and senators in support of this position.

January, 1983

Approved by AACSB Board of Directors  
February 3, 1983  
St. Louis, Missouri

Proposals by Kellogg H. Whittick

on

H.R. 1510

Immigration Reform and Control Act

of 1983

March 24, 1983



I thank Romano L. Mazzoli, Chairman and all members of the Subcommittee on Immigration, Refugee and International Law for this opportunity to submit a statement on this highly important and subjective issue. Important because in-migration affects our social, political economic conduct and welfare. This is evident in our new immigrant who are not socialized within the context of the "melting pot" concept but remain a cultural island unconsciously constructing a compartmentalized social structure. The current global technological evolution and dissemination of ideologies vying for converts force us to perceive our immigration laws as an integral part of our domestic and international relations. Immigration controls basically enunciate the sovereignty of a state. Therefore, we should accept the conclusion that immigration reform and innovative controls are necessary for the enhancement of this nation

We cannot endure much longer the trend of immigration to this country or the debility of existing controls. The Immigration Reform and Control Act of 1983 should encompass workable, cost-effective, and unambiguous changes inclusive of the following proposals:

I. ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE (8 U.S.C. 1255)

Recommended Change - A restriction to make eligible for adjustment of status only those foreign nationals inspected and admitted or paroled into the United States and are maintaining the lawful status of such classification...

Rationale - to reduce the large number of persons admitted as nonimmigrants, who then remain longer than authorized and apply for adjustment of status after gaining a qualifying equity. This would reduce a large number of cases pending adjudication by the Service and a significant number pending expulsion hearings.

II. ADMISSION OF NONIMMIGRANT (8 U.S.C. 1184)

Recommended Change - include a new paragraph stating that a visa shall be issued under the provision of section 101(a)(15)(F) if the consular officer is reasonable satisfied that the foreign national intends to pursue a course of study in the United States.

Rationale - Our institutions of higher learning are experiencing difficulties with their enrollment. It is encumbent on this nation to enduce foreign nationals to study in our institutions. A mind exposed to our quality of life is a mind inculcated in our values and ideals. These students returning to their countries will to a large extent, be in positions impacting on their governments and will be champions of our causes or at least they will be listeners with intellectual similitude with whom interpersonal transactions may be facilitated. This is important to our international relations, and is a thrust worthy of consideration in effecting our Carribean Basin Initiative.

## III. AMNESTY

If used in linkage with judicious and fair sanctions, will provide the most innovative, effective and efficient control of the undocumented alien flow to the United States. To grant amnesty without establishing a disincentive will not be a reform, but will be a continued disarray in immigration control. We should consider, however, a major deleterious result if amnesty is available to only a small number of our undocumented alien population. Those who are not eligible will, in large number, participate in schemes and large-scale documentary frauds that will nullify the intent of this amnesty. Therefore, for amnesty to be effective as intended, the majority of the undocumented population should be included as statutorily eligible. This can be accomplished by granting amnesty to all undocumented aliens who can prove residence in the United States three years prior to the effective date of the Act. The Act should specify the period within which an undocumented alien should register to be considered for amnesty.

All other undocumented aliens in the United States at the time of enactment should register within a specified time and be granted permanent residence after proving continuous residence, without interruption, in the United States; and the ability to understand simple written and oral English.

## IV. EMPLOYER SANCTIONS

This is the major deterrent to illegal immigration. However, because of the concerns that such sanctions may induce discriminatory results, and that businesses are requested to engage in an enforcement activity, it is proposed that an alternative with equal dissuasive potential be considered. Such an alternative should disarm any figment of discrimination, real or imagined, and should relieve our business and commercial sectors from having to engage in actions that may be construed as police work, which is not perceived as an enhancement to ethical profit incentives. Our present undulating economy should signal us not to introduce any process that may impinge on the concentration of our business leaders who are attempting to abate regressive economic trends

I offer the following alternative: The Act should request that all employers submit to the Immigration and Naturali-

zation Service, District Office of Jurisdiction, a list with the name, Social Security Account number, place and date of birth, alien registration number, and nationality of each employee. Such a list should be submitted no later than the third month after the effective date of the Act. By January 31, each succeeding year, another list of persons hired during the interim must be submitted with the same data.

The INS should have the authority to request the appearance of any employee on such lists, with documentary evidence, at the office of jurisdiction nearest the place of employment to prove the right to be gainfully employed in the United States. The INS should have the authority to check the employment premises, without a search warrant, based on lists reflecting probable cause for such action. The INS may call in an employee to verify his status by corresponding with employer, check records of INS and other agencies.

The Act should express that the INS may check the records of the Internal Revenue Service, Department of Labor, and Social Security Administration to ascertain the immigration status of any person believed to be a foreign national. This should include persons believed to be falsely claiming United States citizenship.

If an employer does not submit a list within the specified time, a fine should be levied for each employee not reported and compounded for each day beyond the reporting deadline. With the increasing use of computers and word-processors preparing such a list would not impose any financial hardship on employers.

The INS would not require any dramatic personnel increase to enforce this alternative. Lower grade personnel designated as Investigator's Aides, GS-5 and GS-6 could be assigned in each INS District Office to monitor the receipt of lists, check each lists, request agency checks, and refer to the Supervisory Investigator for Area Control, those employers whose lists reflect that there is probable cause to believe that any employee is gainfully employed without authorization.

This alternative provides the necessary discouragement to those persons motivated to enter the United States to engage in unauthorized gainful employment. It will not have any influence on the employer's decision to hire. This factor will eliminate the probability for allegations of discrimination based on national origin. The employer's obligation is to comply with a legal formulation not bestowing any

police or enforcement power in hiring transactions with foreign national employees.

V. GUEST WORKER

The H classification under Title 8 U.S.C.1101(a)(15) will suffice the need to bring temporary workers into the United States. To tamper with this section would not be a beneficial reform. It has not and is not a problem.

VI. JUDICIAL REVIEW

This has been abused and has created a paralysis of expulsion proceedings. It should be curtailed as specified in H.R.1510. Having respondents saunter through the labyrinth of judicial reviews is frequently unsuccessful and always costly to them. This has been a motivation for those respondents to engage in unauthorized gainful employment. To continue in the present format is to give the signal that irrespective of our attempt at reforms, we will leave a large uncontrolled segment of undocumented aliens who will have real hope of prolonging their stay in the United States until a benefit is acquired, such as suspension of deportation, adjustment of status obtained by marrying a United States citizen or obtaining a job offer. Both marriage and job offer are sometimes fraudulent.



INDIAN-AMERICAN FORUM  
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STATEMENT OF  
DR. NATWAR M. GANDHI  
FOR THE RECORD OF THE  
HOUSE SUBCOMMITTEE ON IMMIGRATION,  
REFUGEES & INTERNATIONAL LAW

FOR FURTHER INFORMATION CONTACT:  
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14625 STONEWALL DRIVE  
SILVER SPRING, MD. 20904

(301) 384-6252

MARCH 7, 1983

Mr. Chairman and Members of the Subcommittee:

I am Natwar M. Gandhi and I represent Indian-American Forum for Political Education. On March 25, 1983, I accompanied two of my colleagues, Dr. George K. Zachariah and Dr. T. V. George and presented our views on the proposed Immigration Reform and Control Act of 1983 before the Senate Subcommittee on Immigration and Refugee Policy. I am pleased to do the same before your committee.

The primary purpose of our Forum is to function as a catalyst to create political awareness and to provide opportunities for learning through discussion sessions on contemporary economic and social issues affecting lives of individuals of Asian Indian origin residing in the United States. The Forum organizes lectures, meetings, seminars, symposia and workshops on issues pertaining current political, economic, legislative and regulatory developments.

As an immigrant community we are indeed small, some 400,000 in all, and new to this great land of opportunities. Most of us came only after the liberalization of immigration quota rules in 1965. British policies prior to Indian independence and the U. S. Law before recent liberalization largely account for the earlier dearth of sizeable immigration from that region. Even though there are significantly larger groups of residents from less populated Asian countries, there is only a relatively small group of people in this country from the Indian sub-continent. Though late in coming here, we have not come empty handed. We have come endowed with a dazzling array of professional and trade skills and an amazing degree of higher education. We are among the most professional and highly educated citizens of the United States.

We are a small community when measured by our numbers, but when one looks at the contribution that we have been making to our adopted country, we are indeed a major professional force. Most illustrious and visible member of our community are persons like Zubin Mehta, the famed conductor of New York Philharmonic, Ravi Shanker, the great sitarist and Dr. Hargobind Khoranna, the Nobel Laureate scientist.

But there are hundreds of thousands of us making significant contribution to fields as diverse as accounting and zoology and anything in between. There could hardly be a hospital in this country without an Indian doctor, a university without an Indian professor, a major engineering firm without an Indian engineer, or a highway without a resting place, generally a small motel, run by an enterprising Indian. One can hardly open a professional journal without a major article authored by an Indian in it.

I catalogue all this not as an exercise in self-praise, but to emphasize the fact that we have contributed far out of proportion to our small numbers, and to acknowledge the fact that this great country has provided us with opportunity to do so. Indeed, whatever others may say, we could say unequivocally, that America has been good to us. The distinguished American psychoanalyst Erik Erikson, himself an immigrant and biographer of the great Indian leader Mahatma Gandhi, once remarked that to an immigrant with skill this country is a heaven. We have proved that once again. The American dream is a reality to us.

Along with our professional skills and entrepreneurial zeal, we have also brought with us the great cultural and spiritual heritage of India, which I believe, adds substantially to the rich milieu of ethnic America. Economically, socially and spiritually, we are one immigrant community which has found its niche in this land of immigrants.

However, we have come from a society and culture where concepts of family and family relationships are broad. To us a brother and a sister are as close as a son and a daughter. Father and mother matter as much as husband and wife. These are also very strong relationships which have been nurtured through an ancient culture and instilled into us from childhood. The great Indian epics from which our values are distilled, speak glowingly of sacrifices one should make for brother and sister, father and mother. It is this bond of love and obligation that binds us to those dear ones we have left behind in India. It is that bond again which brings us here today before you to object to one particular provision of the immigration reform bill whose overall goals we endorse and support.

The proposed Immigration Reform and Control Act of 1983, if adopted, would eliminate the special consideration given to the immigration of brothers and sisters and adult sons and daughters of the American citizens. Under this provision, many of us may never be again united with our family members whom we have left behind and whose love and warmth we miss daily and whose welfare is at our heart during every waking moment.

It should be noted that whether in the earlier days or the later, the immigrant brought with him no institutions except perhaps that of the family. It is not therefore without reason that in the long evolution of American immigration policy the basic principle of family unity became one of its corner stones. Since the first quota restrictions became public law in 1921 the Congress has recognized the principle of family unity as a basis for restriction exceptions. Progressively all the members of the family were included in the system. The restriction in the new bill will indeed be a step backward.

We strongly urge that the current preference system be retained and be made a permanent part of the immigration reform. The current preference system also assures us that we, the new citizens, too, will have same right to the family reunification, that has been given to those who were lucky enough to land here before we did.

We are also concerned about an arbitrary cut-off date of May 27, 1982, by which an application for fifth preference migration should have been approved for a family member to come to the United States. This cut-off date will leave American citizens as well as their family members abroad at the mercy of Immigration and Naturalization Service (INS) which generally takes months to process and approve immigration applications. We are also concerned about the current backlog for the family reunification category. An American citizen may have applied many months before the cut-off date, and yet could be denied his family reunification right just because the INS, over burdened as it is, did not process the application before the cut-off date. We believe that such a cut-off date is arbitrary and capricious, and thus should be rejected altogether. A one-time waiver of numerical limitations would alleviate the two to four year delay for those family members who have otherwise complied with all immigration requirements.

We applaud and appreciate the great efforts that you, Mr. Chairman and the Committee have made to reform the immigration process. We also wish to commend the great preparatory work of the Select Commission on Immigration and Refugee Policy. We endorse and support its overall objectives. However, we also believe that family reunification provisions of the current law should be maintained because it strengthens family traditions cherished here. We also believe that selective immigration like ours also enhances the professional strength and economic health of America. Indeed, it is a great bargain for America.

We thank you for giving us this opportunity to present our views.



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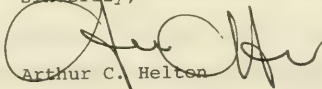
March 18, 1983

FEDERAL EXPRESS

House Judiciary Committee  
2137-D Rayburn House Office Building  
Washington, D.C. 20515

In accordance with our recent telephone discussion, I ask you to include in the record of the hearings of the Subcommittee on H.R. 1510 this letter and a copy of the enclosed Report on the Summary Exclusion and Judicial Review Provisions of Pending Legislation to Amend the Immigration Laws that was prepared late last year by the Immigration and Nationality Law Committee of the Association of the Bar. The recommendations set forth in the Report are still pertinent in view of the fact that the versions of the legislation introduced last year, which the Report addresses, mirror in all relevant respects the versions now under consideration by the Subcommittee and in the Senate.

Sincerely,

  
Arthur C. Helton

ACH/gh

Enclosure

REPORT ON THE SUMMARY EXCLUSION AND  
JUDICIAL REVIEW PROVISIONS OF  
PENDING LEGISLATION TO AMEND  
THE IMMIGRATION LAWS

by the

Immigration and Nationality Law Committee  
of the Association of the Bar  
of the City of New York

NOVEMBER 1982

INTRODUCTION

In March of 1982, Senator Alan K. Simpson and Congressman Romano L. Mazzoli introduced legislation (the Simpson-Mazzoli bill), proposing comprehensive immigration reforms, including a proposed summary exclusion procedure and proposed restrictions on federal court jurisdiction.<sup>1/</sup> On August 17, 1982, the Senate passed its version of the bill with relatively few changes. On September 22, 1982, the Committee on the Judiciary of the House of Representatives reported out a re-numbered bill with substantial changes.<sup>2/</sup> It is possible that the House Committee version will be considered by the full House in early December of 1982 during the "lame-duck" session of Congress.

The Committee on Immigration and Nationality Law recognizes the need for reform in our country's immigration laws. The problem of illegal immigration is a problem of national dimension. The Committee is concerned, however, with several aspects of the Simpson-Mazzoli bill. The concerns include the risks posed to arriving refugees by the proposed summary exclusion procedure, as well as the impact upon applicants for political asylum and others of the proposed restrictions on federal court jurisdiction.

THE PROPOSED SUMMARY EXCLUSION PROCEDURE

The Simpson-Mazzoli bill would introduce new procedures for inspecting certain aliens seeking to cross the border. In particular, under the Senate version, any alien who appears to lack entry documents (i.e., a passport and/or visa) or a basis for entry, or who has not "applied for asylum," is to be "excluded from entry into the United States without further inquiry or hearing."<sup>3/</sup> A determination of the alien's inadmissibility at this juncture would be subject neither to administrative nor to judicial review under the Senate version.

Under the House committee version, summary exclusion is required for aliens who have no apparent documentation, or basis for entry. Exclusion is also mandated if the alien "does not indicate an intention" to apply for asylum.<sup>4/</sup> While the House version does not provide for judicial review of a determination of admissibility at this juncture, a form of administrative review is provided. Specifically, the bill provides that:



Before excluding an alien without a hearing under clause (i), the examining immigration officer shall inform the alien of his right to have an administrative law judge redetermine the conditions described in clause (i). If the alien requests such a redetermination by an administrative law judge, the alien shall not be so excluded without a hearing until and unless the administrative law judge (after a nonadversarial, summary proceeding in which the alien may appear personally) redetermines that the alien meets the conditions of sub-clauses (I) through (III) of the clause (i). 5/

Both the Senate and House Committee versions provide that:

The Attorney General shall establish, after consultation with the Judiciary Committees of the Congress, procedures which assure that aliens are not excluded under paragraph (1)(B) without an inquiry into their reasons for seeking entry into the United States. 6/

THE RISKS OF SUMMARY EXCLUSION FOR ARRIVING REFUGEES  
AND THE NEED FOR NOTICE OF THE RIGHT TO COUNSEL

Initially, it should be noted that a summary exclusion procedure is a radical departure from current inspection and inquiry procedures in the Immigration and Nationality Act which afford an alien the opportunity to present his or her case for admissibility (or for asylum) through counsel, at an adversarial hearing before an immigration judge. 7/ The consequence of the failure of an

alien to satisfy an inspector as to admissibility would change from a full exclusion hearing before a separate fact-finder to summary exclusion with, at best, a limited hearing and restricted access to counsel.

A summary exclusion procedure may encourage the United States to violate its obligation to refrain from refoulement under Article 33(1)<sup>8/</sup> of the 1951 Convention and 1967 Protocol Relating to the Status of Refugees.<sup>9/</sup> This is the duty to not expel or return a refugee to the frontiers of territories where his or her life or freedom would be threatened on account of race, religion, nationality, or membership in a particular social group or political opinion.<sup>10/</sup> A refugee who would experience persecution might be turned away from the border under the proposed procedures without any recourse simply because of an inability to articulate the reasons that persecution is feared, or to persuade the inspector (or administrative law judge) that the fear is well-founded, or because he or she is afraid to speak to authorities.

The international experience indicates that a refugee who arrives at the border after a stressful and surreptitious journey often lacks the documentary resources, the psychological reserve, and even perhaps the willingness then to persuade someone of the bona fides of the claim. Indeed, the Handbook on Procedures and Criteria for Determining Refugee Status published in 1979 by the United Nations High Commissioner for Refugees (UNHCR) graphically describes the difficulties experienced by aliens in pursuing asylum at the border:

It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological, in submitting his case to the authorities of a foreign country, often in a language not his own. His application should therefore be examined within the framework of specifically established procedures by qualified personnel having the necessary knowledge and experience, and an understanding of an applicant's particular difficulties and needs. (Para. 190.)

...[A]n applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all

his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents... (Para. 196.)

\* \* \*

A person, who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case. (Para. 198.)

\* \* \*

In fact, in comments on the House committee version of the bill itself, the UNHCR stated specifically:

In view of the precarious and vulnerable situation in which an asylum seeker may find himself at the frontier, it is necessary to ensure that the existence of an asylum claim is not overlooked by the examining officer.11/

A summary exclusion procedure fails to address these concerns.

RECOMMENDATION: NOTICE OF THE RIGHT TO COUNSEL

In order to protect against refoulement, aliens should, at the very least, be informed of their right to counsel prior to being barred from entry into the United States.



The right to be represented by counsel is one of the most important elements of due process of law. Indeed, the Immigration and Nationality Act provides:

In any exclusion or deportation proceedings before a special inquiry officer and in any appeal proceedings before the Attorney General from any such exclusion or deportation proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.<sup>12/</sup>

In fact, indigent aliens who have been placed under exclusion or deportation proceedings are given lists of available free legal services by the Immigration and Naturalization Service as a matter of course in view of the critical nature of the interests implicated in the <sup>13/</sup> process.

The Senate and House committee versions of the proposed legislation do not purport to abrogate in any respect the right to counsel in the exclusion context, irrespective of whether or not the procedure is "summary" in character. Indeed, under current law, aliens have a right to representation in numerous "nonadversarial" immigration proceedings, such as examinations in connection with <sup>14/</sup> permanent residence applications. The important interests

at stake in the immigration context generally are recognized in the entitlement to counsel. The interests of asylum applicants in this regard are even more basic --liberty or life.

Since the right to counsel exists in the exclusion context, it should be announced to arriving aliens who would be subject to summary exclusion in view of the interests at stake for arriving aliens. The announcement, moreover, should be translated as appropriate and confirmed in writing. Giving notice of the right is crucial to its preservation in an otherwise unreviewable exclusion process.<sup>15/</sup>

#### THE PROPOSED RESTRICTIONS ON FEDERAL COURT JURISDICTION

Under the Senate version of the proposed Immigration Reform and Control Act, review of denials of asylum requests would be limited to exercising the "right of habeas corpus under the Constitution."<sup>16/</sup> The House committee version provides for exclusive review of asylum denials by petitions for review to the appropriate United States Circuit Courts of Appeals. Residual habeas corpus jurisdiction is retained in the House version and petitions may be "based upon custody effected pursuant to...[the Immigration and Nationality] Act," and may be brought "individually or on a multiple party basis as the interests of judicial efficiency and justice may require."<sup>17/</sup>

THE NEED TO PRESERVE JUDICIAL AND FULL  
ADMINISTRATIVE REVIEW

The Senate version, to the extent that it reserves the right of habeas corpus "under the Constitution," may be misinterpreted to limit the availability of the writ to address statutory and treaty violations, including violations of the Protocol Relating to the Status of Refugees. The House committee version avoids the risk of confusion or misinterpretation by incorporating the "right of habeas corpus under chapter 153 of title 28, United States Code,"<sup>18/</sup> which confers jurisdiction to address<sup>19/</sup> violations of Constitution, statute, or treaty. The House committee version is preferred for this reason.

Furthermore, the adjudicatory system envisaged by the Senate and House committee versions of the bill is limited in scope to the consideration of individual asylum claims that have been litigated in the agency. The House committee report counsels that "there is to be no judicial review of any aspect of the asylum process" until an order of exclusion or deportation has been finalized.<sup>20/</sup> Such an approach, however, would be an overly rigid one.

Though the requirement that one exhaust administrative remedies before seeking judicial review is a long-standing feature of administrative law, equally long-standing are the exceptions to that requirement. Thus, for instance, one may turn directly to the courts without exhausting agency proceedings when a) the agency cannot supply an adequate remedy; b) the agency action will cause irreparable injury; c) the agency has exceeded its statutory authority; or d) pursuing an administrative remedy would be futile.<sup>21/</sup> The point is that exhaustion is a common-sense requirement; therefore, an exception is made when the drawbacks of exhaustion outweigh the advantages in a particular case.<sup>22/</sup> These specific exceptions to exhaustion, as well as a general one permitting evaluation of the specific circumstances, should be taken into account in the bill, lest the new statute be misinterpreted as radically changing the traditional rules on exhaustion.

Put another way, direct federal court jurisdiction should be preserved in cases that attack patterns and practices inimical to the assertion of asylum-related and other rights. Such cases are very few in number, but they



are crucial to protecting rights such as an alien's right to pursue asylum. See, e.g., Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980), modified on other grounds, 676 F.2d 1023 (5th Cir. 1982), in which the district court found that the asylum adjudication process had been perverted in connection with a government Haitian Program designed to expel Haitians without regard to the individual circumstances of their cases. It would make no sense, for example, to require asylum applicants to go through biased or unfair proceedings in order to be able to challenge pattern and practice violations. Jurisdiction for these purposes should be maintained.

#### CONCLUSION

The Committee on Immigration and Nationality Law is deeply concerned about the risks posed to arriving refugees by the summary exclusion procedure, as well as the impact upon applicants for political asylum and others of the restrictions on federal court jurisdiction proposed under the Simpson-Mazzoli bill. The House committee version is preferred to the extent that it makes clear that habeas corpus jurisdiction includes violations of Constitution, law, or treaty. Both the Senate and House committee versions, however, should be amended to provide notice of

the right to representation for aliens who may be subject to summary exclusion, and to provide direct access to the federal district courts to correct violations of law which cannot be corrected in the agency.

Respectfully submitted,

Committee on Immigration and  
Nationality Law

Arthur C. Helton, Chair  
J. Philip Anderegg\*  
Brenda Berkman  
George Theng Chew  
Michael I. Davis  
Michael John Dell  
Henry S. Dogin  
Diane Englander  
Grace Goodman  
Alice H. Henkin  
Frederick M. Joseph  
Dung Quoc Nguyen  
Jane C. Rubens  
Elaine F. Shea  
George Bundy Smith

\* Mr. Anderegg does not subscribe to the views in this report.

APPENDIX OF PROPOSED AMENDMENTS TO  
THE HOUSE COMMITTEE VERSION

Summary Exclusion

Section 121. Subsection (b) of section 235 (8 U.S.C. 1225)  
is amended to read as follows:

"(b)(1)(B)(ii) Before excluding an alien without a hearing under clause (i), the examining immigration officer shall inform the alien of his right to have an administrative law judge redetermine the conditions described in clause (i), and of his right to representation as set forth in Section 292 of the Act. If the alien requests such a redetermination by an administrative law judge, the alien shall not be so excluded without a hearing until and unless the administrative law judge (after a nonadversarial, summary proceeding in which the alien may appear personally) redetermines that the alien meets the conditions of subclauses (I) through (III) of clause (i)."

Judicial Review

Section 123. Subsection (a) of section 106 (8 U.S.C. Section 1105(a) is amended...by striking out (11) and inserting in lieu thereof

"The district courts shall have original jurisdiction over all causes concerning violations of this title to the extent that the exhaustion of the administrative remedies set forth in this section would not be appropriate or in the interest of justice. An action brought under this section may be brought individually or on a multiple party basis as the interests of justice may require.

FOOTNOTES

1. S. 2222, H.R. 5649.
2. H.R. 6514.
3. Section 121(b)(1)(A) and (B).
4. Section 121(b)(1)(B)(i)(III).
5. Section 121(b)(1)(B)(ii).
6. Section 121(b)(3).
7. See 8 U.S.C. §§ 1158, 1225, 1226, 1362.
8. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers or territories where his life or freedom would be threatened on account of his race, religion, nationality, membership in a particular social group or political opinion.
9. The United States became a party to the Protocol in 1968. 19 U.S.T. 6257, T.I.A.S. No. 2322, 606 U.N.T.S. 268.
10. The domestic law correlative provides that "[t]he Attorney General shall not deport or return any alien...to a country if the Attorney General determines that such alien's life or freedom would be threatened in such country on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 U.S.C. § 1253(h).
11. Comments by the Office of the United Nations High Commissioner for Refugees on the Immigration Reform and Control Bill of 1982, H.R. 6514.
12. 8 U.S.C. § 1362.
13. See 8 C.F.R. §§ 236.2, 242.1(c).
14. See 8 C.F.R. § 292.5(b).



15. See Orantes-Hernandez v. Smith, 541 F. Supp. 351 (C.D. Calif. 1982); Nunez v. Boldin, 537 F. Supp. 578 (S.D. Tex. 1982), in which courts required the Immigration and Naturalization Service to give aliens advice of the right to apply for political asylum in order to effectuate the right.
16. Section 123.
17. Section 123(b).
18. Section 123(b).
19. 28 U.S.C. § 2241.
20. Immigration Reform and Control Act of 1982: Report on HR 6514 by the Committee on the Judiciary, 97th Cong., 2d Sess. at 50 (1982).
21. See, e.g., First Jersey Securities, Inc. v. Bergen, 605 F. 2d 690, 696 (3d Cir. 1979); Barnes v. Chatterton, 515 F. 2d 916, 920 (3d Cir. 1975); Hillsboro Township, Somerset County, N.J. v. Cromwell, 326 U.S. 620, 625-26 (1946). Also see, generally, Chapter 20 of Professor Davis' Administrative Law of the Seventies and 1982 Supplement to his Administrative Law Treatise, on exhaustion principles.
22. Jette v. Bergland, 579 F. 2d 59, 62 (10th Cir. 1978).



**BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES**

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PETER F. SCHABANUM  
SUPERVISOR, FIRST DISTRICT

March 7, 1983

Honorable Romano L. Mazzoli  
2246 Rayburn House Office Building  
Washington, D. C. 20515

Dear Congressman Mazzoli:

The Los Angeles County Board of Supervisors, on which I serve, supported immigration reform legislation last year with the provision that State and local governments be fully reimbursed for the costs of aiding illegal aliens who would be granted legal status. While the need for immigration reform which would strengthen our nation's capacity to control illegal immigration is greater than ever, I personally believe that a mass legalization program should not be included in such reform at this time.

I recognize that good reasons exist for wanting to enable those honest, hard-working illegal aliens who have established roots in this country to become legal residents. It is my opinion, however, that the potential benefits of legalization are outweighed by its costs.

First, legalization may worsen the problem of illegal immigration rather than contribute to its solution. Even with the assistance of voluntary agencies and community-based organizations, implementing a legalization program would be a major administrative undertaking which would demand much of the resources and attention of the U.S. Immigration and Naturalization Service (INS). In light of the fact that INS has been unable to control illegal immigration with the limited resources currently available to it, I question the wisdom of diverting any of its resources to the proposed legalization program.

The number one priority of national immigration policy should be to control illegal immigration. Unless INS enforcement capabilities are sufficiently strengthened, legalization might serve only to attract additional influxes of illegal aliens who enter with hopes of qualifying under this or some future legalization program.

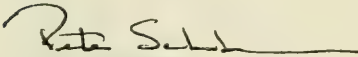
I also have strong reservations about the potentially high costs of legalization to all levels of government. Immigration expert David North, who studied the potential effects of legalization on Los Angeles County, estimated that the cost of providing General Relief to legalized aliens may run as high as \$108 million over the first three years of the program. He also believes the County would incur an additional \$20 million a year in health care costs. The Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) both have come up with similarly high cost estimates for the nation as a whole.

Los Angeles County and the State of California both face major budget shortfalls and cannot absorb such added costs without considerable difficulty. Like other State and local officials, I believe that the Federal Government should fully reimburse states and localities for costs that would result from legalization. National immigration policies, including any decision to legalize the status of illegal aliens, are a Federal responsibility over which states and localities have no control.

I am increasingly of the opinion that, given the massive budget deficits facing the Federal Government, the legalization proposal should be modified or dropped from immigration reform. Just as State and local governments cannot afford the high price of legalization, neither can the Federal Government. Limited Federal immigration-related funds should be targeted for enforcement activities aimed at preventing the entry of additional illegal aliens rather than on implementation of legalization.

In closing, I want to make it clear that this letter expresses my personal views regarding legalization and immigration reform and does not necessarily reflect the official position of the Board of Supervisors.

Sincerely yours,



PETE SCHABARUM  
Supervisor, First District

PS:1a

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Hon. Romano I. Mazzoli

Chairman

Subcommittee on Immigration, Refugees & International Law

US House of Representatives

Washington D.C.

The Federation of Indian Associations is an umbrella organization headquartered in New York City, with about 40 community organizations as members. The Association thus represents virtually the whole Indian community in the Tri-state area.

The Federation recognizes the need to overhaul the immigration law and tackle the problem of illegal aliens. The administration and the Select Commission on Immigration and Refugee Policy have also focussed their efforts in this direction. The Federation, however, disagrees with the subcommittee in its attempts to dismantle the family unification system built-in in the existing law. Several reforms took place since 1921 in relation to the family unification and even now the system is unsatisfactory in some respects. For instance, there is no provision in the preference system for sponsoring parents by the immigrants. Such can be done only after they become citizens. This causes undue hardship on immigrants who have parents that are old and dependent.

In stead of improving the law to satisfy the needs of lawful immigrants who arrived in this great country with high hopes, the present bill purports to eliminate existing provisions relating to brothers, sisters, and children of permanent residents. Immigrants from India started arriving in this country after the quota system providing for 100 per year for India was lifted in 1965. The proposed change would cause undue hardship on this small community which is just trying to establish its roots in this country. The Federation strongly urges the Committee and Senate to retain the existing provisions in this regard.

The Federation also urges the retention of the immediate relative and special immigrant categories as they are. Even with the present numerical system of preferences, it is taking years before the relatives are given visas. The current Visa Bulletin shows that the US Consul in Philippines is considering petitions filed by US citizens for their brothers and sisters in Philippines in 1971. By combining the preference relatives system with immediate relatives and special immigrants, the waiting time is further extended. As an alternative, the Committee should authorize allocation of visas to all those whose petitions have been approved as of the date of passage of the bill. In any case, the cut off date of May 27, 1982 is arbitrary and would be unduly harsh on us.

AMERICAN ASSOCIATION OF INDIAN ASSOCIATIONS  
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INDIAN ASSOCIATION OF NEW YORK  
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(Chairperson)  
(201) 783-6593

The existing numerical system permits only unmarried sons and daughters of permanent residents to be given immigrant visas. The married children of permanent residents will not be able to come anyway. To further reduce this category to minor children with an age limit of 18 years would cause undue hardship in most cases. The joint family system in India does not permit a person reaching his/her majority to have an independent life. The second preference should also be retained as it is.

The requirement that foreign students should return to their country for two years before they can apply for immigration is also arbitrary. What good does it do except frustrate and rot their skills? After all such two year requirement for exchange visitors was recently eliminated for most categories, after it was in existence for over a decade. If the students are intelligent and competent, they should be given the opportunity to apply for immigration. The Federation considers that this provision should not be changed.

Respectfully submitted for the kind consideration of your subcommittee.

New York, N.Y.

March 11, 1983

*Krishna M. Vempaty*

Krishna M. Vempaty  
Chairperson  
Immigration Committee

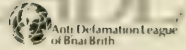
BHARATHI SOCIETY OF AMERICA  
BIHAR ASSOCIATION OF N.Y.  
CULTURAL ASSOCIATION OF BENGAL  
GOAN ASSOCIATION OF N.Y.  
GUJARATI SAMAJ  
HEART & HAND FOR THE HANDICAPPED  
HINDU CENTER  
HINDU CULTURAL SOCIETY  
HINDU TEMPLE SOCIETY OF N.Y.

INDIA ASSOCIATION OF LONG ISLAND  
INDIA ASSOCIATION OF SOUTH BRUNSWICK  
INDIAN ASSOCIATION OF STATEN ISLAND  
INDIA CLUB OF COLUMBIA UNIVERSITY  
INDIA CULTURAL SOCIETY OF N.J.  
INDIA CULTURAL SOCIETY OF ROCKLAND COUNTY  
INDIA DEVELOPMENT SERVICE OF N.Y.  
INDIA FESTIVAL COMMITTEE  
INDIA LEAGUE OF AMERICA (IN CHAPTER)

INTERNATIONAL PUNJABI SOCIETY  
KANNADA KOOTA  
KERALA ASSOCIATION OF N.J.  
KERALA CULTURAL ASSOCIATION OF N.A.  
KERALA SAMAJAM OF GREATER N.Y.  
KONKANI SABHA  
MAHARASHTRA MANDAL  
OVERSEAS INDIAN CONGRESS OF N.A.  
RAJASTHAN PARISHAD (AMERICA)

SHAMEED BHAGAT SINGH PUNJABI CULTURAL ASSOC.  
SIKH CENTER  
SIKH CULTURAL SOCIETY  
SINDHI ASSOCIATION OF AMERICA  
TAGORE SOCIETY OF N.Y.  
TAMIL SANGAM  
TELUUGU LITERARY AND CULTURAL ASSOCIATION  
VOLUNTEERS FOR INDIA'S PROGRESS CLUB  
VOLUNTEERS IN SERVICE TO EDUCATION IN INDIA

## MEMBER ORGANIZATIONS



March 9, 1983

Honorable Romano L. Mazzoli, Chairman  
House Judiciary Subcommittee on Immigration,  
Refugees and International Law  
2137 Rayburn Building Staff Room D  
Washington, DC 20515

Dear Representative ~~Dennis~~ **Mazzoli**:

Attached you will find a statement of the  
Anti-Defamation League of B'nai B'rith on the  
Immigration Reform Act. I hope that the con-  
cerns of the ADL as set forth in this statement  
will receive due consideration.

Sincerely,

*Justin J. Finger*  
Justin J. Finger  
Director  
National Civil Rights Division

JJF:es  
Att.

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Statement of the Anti-Defamation League of B'nai B'rith on the  
Immigration Reform and Control Act of 1983

The question of immigration reform has always been a concern of the Jewish community. Because Jews as a people have historically been forced to flee from various areas of the world to escape persecution and extermination, we have favored laws that made possible swift and painless entry into countries willing to offer shelter. From the time that the Anti-Defamation League of B'nai B'rith was founded in 1913 up until the passage of the McCarran-Walter Act in 1952, the immigration laws of this country were restrictive and discriminatory. To the Anti-Defamation League, whose founding mandate was to fight discrimination and prejudice, these laws represented nothing more than a codification of the very principles to which we were opposed. Accordingly, in 1952 and again in 1953 the Anti-Defamation League expressed its opposition to the then pressing issues of discriminatory national origins quotas, inequality of treatment between naturalized and native-born citizens, harsh and inflexible deportation procedures and the unchecked discretion vested in immigration officials to exclude would be immigrants.

In February 1982, the Anti-Defamation League took up the plight of the Haitian refugees and urged the enactment of legislation by which the status of those seeking asylum in the United States would be adjudicated swiftly and fairly.

While reform legislation to date has attempted to resolve many of our concerns about harsh and restrictive immigration laws, the Anti-Defamation League recognizes that the changing political and economic climate have disclosed new flaws in the immigration laws, in its inability to solve problems of illegal immigration, mass asylum, and the sheer numbers of people seeking refuge in this country. The Simpson-Mazzoli Bill as it emerged from the Senate and House in its

various forms last term, represents the most significant effort to date to develop comprehensive immigration laws to counter the changed nature of the problems and yet preserve the liberal immigration policy of which this country can be so proud.

Given these laudatory goals, the Anti-Defamation League believes that effective immigration laws must reflect certain basic principles. The Anti-Defamation League strongly supports the concept of family reunification. We believe that while the present ceiling on legal immigration is generous, immediate relatives of United States citizens should not be included within that ceiling. This class of immigrants who come to this country to join their family should continue to be admitted without numerical limitation. Similarly ~~lines~~, it would be a mistake to contravene the principle of family reunification by eliminating the preference found in existing law for siblings of American citizens and unmarried relatives of permanent residents.

Another positive aspect of the proposed legislation is the streamlined procedures for adjudicating asylum claims. This will insure that potential entrants seeking refuge in this country will not endure prolonged detention pending review of their claims. We believe however, that the right of full judicial review and not merely that review available on a writ of habeas corpus must be afforded in all asylum cases.

The concept of amnesty is also a crucial part of any reform legislation. No immigration laws can be enforced at this date in our country's history, when our borders have been porous and we have utilized the services of aliens in this country, albeit illegally; unless we legitimize the status of these aliens and commence enforcement of the reform laws anew.

The major aspect of the legislation with which the Anti-Defamation League is deeply troubled concerns the proposals to establish a system of worker



identification and sanctions against employers who employ illegal aliens. Any system of employer sanctions and worker identification is fraught with civil liberties concerns. From the standpoint of the potential employee, worker identification cards have the potential to be developed into a "domestic passport" the use of which could be extended to areas never envisioned in the passage of this legislation. The potential danger will not be eliminated merely by requiring the President to monitor this system. Moreover, from the employers standpoint, the fear of possible sanctions, rather than encouraging employers to comply with the requirements will cause them to refuse to hire anyone who does not appear to be a native born American. Illegal aliens fill a need in certain labor intensive industries by working at menial jobs that most Americans reject. Given the benefit that these workers supply to the economy, the employer and ultimately the consumer, it is unfair to impose this undue burden of verification and the risk of sanctions on employers. We urge this Congress to decline to incorporate these concepts into what might otherwise be effective legislation.

It is our hope that the immigration legislation that emerges from the 98th Congress will reflect the concerns that we have expressed. When that is accomplished, this country will truly have legislation in place which is fair and reflects concern for humane treatment of the world's population.

WESTERN RANGE ASSOCIATION  
presents to  
THE HOUSE SUBCOMMITTEE  
ON IMMIGRATION AND REFUGEE POLICY

INTRODUCTION

The Western Range Association is a group of employers who are broadly representative of the range sheep industry in the Western United States. The Association was formed in the early 1950s to bring sheepherders to the western range from the Basque regions of Spain.

At present the Association brings sheepherders to the United States from Peru, Mexico and Spain as temporary workers under the H-2 program. All of the herders are experienced in herding sheep in the mountain regions of their home countries.

Sheepherders brought to the United States under the auspices of the Association stay for three years. All of their expenses, including room, board, and travel to and from their homes, are paid by the Association's member employers. Many herders save virtually all of their salaries and return home as relatively rich men.

The foreign sheepherders' labor is vital to the range sheep industry. Since World War II there has been a drastic undersupply of resident americans who are willing to undertake the lonely, rigorous life of the open range sheepherder. The need for herders is greater now than in the past. Environmental restrictions on certain methods of dealing with predators have driven many sheep ranchers out of business. These restrictions have made the remaining ranchers ever more dependent on the sheep's last line of defense-- the sheepherder, his dog, and his rifle. To the sheep raisers, the work of the foreign sheepherder is an economic necessity.

Most foreign herders enter this country through the efforts of the Western Range Association. The Association's essential tool is the H-2 temporary foreign worker program. Yet the H-2 program is a flawed tool--flawed in its basic structure and flawed administratively in recent years by the Labor Department.

The Association, is vitally concerned about the future of the H-2 program. We want to be sure that the immigration proposals, if enacted, will not further flaw the H-2 program. More importantly, we want the Congress to seize the opportunity to reform the H-2 program's basic structural flaws.

## STREAMLINING THE LABOR CERTIFICATION PROCESS

The Association proposes two reforms which would greatly increase the value of the H-2 program to employers while cutting its administrative costs. These reforms would not eliminate any protection now offered to American workers. The Association's proposals are:

1. Issue Blanket Certifications: Blanket labor certifications should be issued covering certain occupations known to be in constant undersupply, such as range sheepherders.

There are simply no qualified, willing American sheepherders who are not already herding sheep. Even the Department of Labor's employees have admitted this fact. It makes no sense to require the state employment services each time a new sheepherder is needed, (and again after each 11 months until he leaves the country) to search for sheepherders who simply do not exist. The Association has partially alleviated this problem by placing with the state employment services an open, blanket job order promising to hire any qualified domestic sheepherder, wherever and whenever he or she emerges. The Association will keep such an open job order on file in any case, because its members always need qualified sheepherders. Nevertheless, the law should allow the Department of Labor to certify to the Attorney General the simple, immutable fact that the Association's program will not and cannot displace Americans.

2. Establish "Date Certain". The current 11 month labor certification period under the H-2 program should be eliminated.

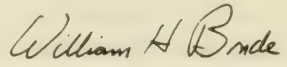


Instead, visas for foreign workers should contain a "date certain". The date certain would be the last day of the period of the employer's need for the employee's services. The period could be as short as a few weeks (in the case of certain harvest occupations) or, in the case of range sheepherders, as long as three to five years. There is a single, compelling reason for the date certain proposal: saving money. At present sheepherders who are already in the country must be recertified two or three times before they leave. Since the certification process takes several months, the paperwork is in almost constant circulation between the Association, its members, and various state and federal agencies. This circulation lasts the entire span of the sheepherder's three-year stay in the United States. Yet the process is useless: no new American sheepherders are ever found; the wages and conditions of the job are determined over and over again to be adequate; the recertifications are never denied. A three to five year date certain period for sheepherders would save a large part of the Association's administrative costs and substantial time and money for federal and state agencies.

#### CONCLUSION:

The Association's proposals have one primary goal: economy. Economy for the Association, its members, and the government. The economies which would be gained through these proposals would be a Godsend to an industry which is older than this nation but which is now engaged in a struggle for survival against foreign competitors. Those economies should also be important to a government which is trying to establish a new, less expansive role.

We urge you to include the Association's proposals in the legislation which results from this subcommittee's consideration of the Administration's immigration plan.

A handwritten signature in cursive script, reading "William H. Bonde".

William H. Bonde

Executive Director

Dated: March 10, 1983

UNDOCUMENTED WORKERS██████████, AS CONTRIBUTORS TO SOCIETYDEPT. OF LABOR STUDY BY DAVID NORTH AND MARION HOUSTOUN  
INVOLVING APPROXIMATELY 1,000 ALIENS: (1976):

77% OF THE STUDY GROUP HAD SOCIAL SECURITY TAXES WITHHELD

73% REPORTED THEY HAD FEDERAL INCOME TAX WITHHELD

27% USED HOSPITALS OR CLINICS

4% COLLECTED ONE OR MORE WEEKS OF UNEMPLOYMENT INSURANCE

1% SECURED FOOD STAMPS

.5% SECURED WELFARE

UNIVERSITY OF ILLINOIS STUDY BY JULIAN SIMON BASED ON  
1976 BUREAU OF CENSUS DATA ON 15,000 NEWLY ARRIVED IMMIGRANTS (1980):

1. IMMIGRANTS TAKE SUBSTANTIALLY LESS FUNDS FROM PUBLIC SERVICES THAN DO NATIVE FAMILIES
2. AFTER 2-6 YEARS, IMMIGRANT FAMILIES PAY AS MUCH, AND LATER SUBSTANTIALLY MORE, IN TAXES THAN DO NATIVES FAMILIES (THIS IS BECAUSE OF THEIR RELATIVELY YOUTHFUL AGE AND THEY ARRIVED WITHOUT ELDERLY PARENTS WHO ALREADY RECEIVE SOCIAL SECURITY).
3. THE NET BALANCE OF THESE FORCES IS POSITIVE

SAN DIEGO STUDY ON IMPACT ON THE COUNTY OF SAN DIEGO  
OF "UNDOCUMENTED IMMIGRANTS", MAY 1980, BASED ON 50,000 ESTIMATES

- UNDOCUMENTED WORKERS EARN \$77.4 - \$150.6 ANNUALLY.  
 OF THESE EARNINGS, REMITTANCES TO THE HOME COUNTRY RANGE  
 FROM 5-12 MILLION. BY CONTRACT, THEY ANNUALLY SPEND  
 A MINIMUM OF \$52 TO \$103 MILLION.
- IN 1979 THE UNDOCUMENTED WORKER PAID AN ESTIMATED \$5.9  
 MILLION TO \$11 MILLION IN JOB-RELATED TAXES
- WELFARE - "UNDOCUMENTED IMMIGRANTS HAVE ONLY A MINISCULE  
 IMPACT ON THE WELFARE SYSTEM IN SAN DIEGO COUNTY, AN ESTIMATED  
 0.1% OF THE TOTAL COUNTY POPULATION ON AFDC.
- SCHOOLS - "THE COST IMPACT OF UNDOCUMENTED IMMIGRANTS ON  
 COUNTY SCHOOLS RANGES FROM \$10 - \$21 MILLION -- 1.9% OF THE  
 COST IMPACT FOR ALL SCHOOL SYSTEMS IN SAN DIEGO COUNTY"

ORANGE COUNTY, CALIFORNIA REPORT ON "ECONOMIC IMPACT OF  
UNDOCUMENTED IMMIGRANTS ON PUBLIC HEALTH SERVICES IN  
ORANGE COUNTY, MARCH 1978 BASED ON A SURVEY OF 200 ILLEGAL ALIENS

- ESTIMATED TAX CONTRIBUTIONS TO ORANGE COUNTY OF 60,000  
 UNDOCUMENTED ALIENS: \$83 MILLION



FINANCIAL COSTS OF AN AMNESTY PROGRAM BY DAVID NORTH  
1982

**LEGISLATION**

BASED ON RESULTS OF PROGRAMS IN OTHER NATIONS --  
 BRITAIN, CANADA, NETHERLANDS, AND BELGIUM -- THERE WERE  
 FEWER ALIENS ACCEPTING LEGALIZATION THAN ANTICIPATED.  
 THE CANADIAN AMNESTY IN 1973 WAS TO PRODUCE 200,000  
 BENEFICIARIES WHEN IN FACT ONLY 50,000 APPEARED

**UNDOCUMENTED ALIENS**

MOST DO NOT HAVE THE FAMILY OR PERSONAL  
 CHARACTERISTICS TO RENDER THEM ELIGIBLE FOR AFDC OR SSI.

- A. TO QUALIFY FOR SSI, AN APPLICANT MUST BE BLIND, DISABLED  
 OR OVER 65
- B. MOST ALIENS ARE SINGLE AND THEREFORE DO NOT HAVE  
 CHILDREN ELIGIBLE FOR AFDC

THE SCHOOLING AND HEALTH OF CHILDREN OF IMMIGRANTS BY  
PAUL SCHULTZ, YALE UNIVERSITY (1976, FROM THE SURVEY OF  
INCOME AND EDUCATION)

ALTHOUGH THIS STUDY DEALS WITH IMMIGRANTS, THE PROSPECTIVE  
 LEGALIZATION PROGRAM CONCERNS ABOUT MEDICAL COSTS MAY  
 BE SOMEWHAT ALLAYED BY THIS REPORT:

"IN THE AREA OF HEALTH . . . CHILDREN OF  
 IMMIGRANTS APPEAR TO BE LESS FREQUENTLY  
 LIMITED IN THEIR ACTIVITIES BY CHRONIC  
 HEALTH CONDITIONS THAN THE CHILDREN  
 OF NATIVES."

GAO REPORT ENTITLED "IMPACT OF ILLEGAL ALIENS ON PUBLIC ASSISTANCE PROGRAMS: TOO LITTLE IS KNOWN" (DEC. 1977)

- THE INDIRECT BURDEN PLACED ON PUBLIC ASSISTANCE PROGRAMS BY UNDOCUMENTED ALIENS (SUCH AS DISPLACING CITIZENS IN JOBS, THUS CAUSING THEM TO SEEK PUBLIC ASSISTANCE) MAY BE GREATER THAN THAT CAUSED BY DIRECT PARTICIPATION IN THE PROGRAM.
- A CHECK OF 45,000 AFDC CASES IN 9 STATES -- INCLUDING CALIFORNIA AND NEW YORK -- IDENTIFIED ONLY 14 RECIPIENTS AS UNDOCUMENTED ALIENS (1/30 OF 1% OF THE SAMPLE)
- A STUDY BY WAYNE CORNELIUS OF MIT DEALING WITH UNDOCUMENTED ALIENS REPORTED ONLY 2.2% OF 505 RECEIVED WELFARE PAYMENTS.
- HEW OFFICIALS IN N.Y. STATED FROM JAN 1974 THROUGH AUG 1977 SOCIAL SECURITY ADMINISTRATION INVESTIGATED 18,300 CASES INVOLVING SSI AND ONLY 61 INVOLVED UNDOCUMENTED ALIENS

GAO REPORT ENTITLED "ILLEGAL ALIENS: ESTIMATING THEIR IMPACT ON THE UNITED STATES (MARCH 1980)

- REFERS TO A STUDY ON THE ECONOMIC IMPACT OF UNDOCUMENTED ALIENS ON PUBLIC HEALTH SERVICES IN ORANGE COUNTY IN 1978 INDICATING 2.8% OF ALIENS SURVEYED WERE ON WELFARE, 1.6% WERE ON FOOD STAMPS, AND 8% WERE MEDICALLY SUPPORTED. THE STUDY ALSO INDICATED 70% PAID FEDERAL INCOME TAX AND 88% PAID SOCIAL SECURITY TAXES.



UNITED FARM WORKERS of AMERICA AFL-CIO

192 Lynnmoor Drive, Silver Spring, Maryland 20901

(301)593-7408

or leave messages at

(301)565-9016

March 30, 1983

The Honorable Romano L. Mazzoli, Chairman  
Subcommittee on Immigration, Refugees,  
and International Law  
Judiciary Committee  
U.S. House of Representatives  
2246 Rayburn House Office Building  
Washington, D.C. 20515

Dear Chairman Mazzoli:

Attached please find the testimony on the H-2 section  
of your bill, which we submitted last year.

From our point of view, all that has changed is that  
unemployment among farm workers -- and most especially, our  
membership -- has risen.

We ask that you consider making changes which will:  
(1) take away the incentive for employers to hire temporary  
workers, (2) maintain certification by the Department of Labor  
and insure its ability to enforce the program, and (3) in-  
corporate a private right of action for any person aggrieved  
by a violation of the H-2 provisions. In addition, it is ex-  
tremely important to retain: (1) the necessity of first  
searching for workers in this country, (2) the limit of time  
of certification, (3) employer disbarment, (4) the present  
certification test, (5) application filing time, (6) existing  
labor standards and (7) a prohibition on issuance or continuance  
of a certification where a strike is in progress.

By legalizing those workers who are already in the workforce  
and contributing to our society, there should be no need to bring  
in temporary workers.

Sincerely,

*Stephanie Bower*

Stephanie Bower  
Legislative Representative

Mr. Chairman, I would like to thank you on behalf of the United Farm Workers of America, AFL-CIO for the opportunity to inform this subcommittee that to approve any temporary worker program of any kind, including the existing H 2 program would, according to our President Cesar Chavez, "... harm all workers, documented and undocumented; because such a plan will be used to delay and defeat organizing efforts among the workers - and without organizational strength, workers have no defense against mistreatment." I would also like to state that our union does not necessarily share the views of others on this panel.

#### BRACERO PROGRAM

In order to paint for you a total picture of how an expanded H 2 program would at this time harm domestic workers and severely damage the organizing efforts of our Union, we need to look at the Bracero Program (Public Law 78), from which growers in the Southwest benefitted - from the Second World War until 1964. The Bracero Program had the following four effects:

- (1) the decline of farm labor wages, as grower associations set rates in advance, then announced a "labor mortgage" when domestic workers refused to work for these low wages;
- (2) the displacement of domestic workers because growers preferred foreign workers - who would be legally and automatically deported at the end of the season;
- (3) the virtual enslavement of braceros who seldom received the promised wages or conditions, who were dependent upon the company for food and transportation, and who often were forced to buy from company stores or labor contractors who ran the labor camps;
- (4) the use of braceros as strikebreakers:

In 1947-49 - Government officials escort Mexican contract laborers through picket lines at the DiGiorgio Fruit Corp., thus breaking a strike by domestic farm workers.

In 1948 - Use of Braceros to break a strike in the Asparagus fields in Stockton, Ca.



In 1950 - 2,000 Braceros are brought to work by Highway Patrolmen and security guards in a successful effort to break the strike of 3,400 San Joaquin Valley tomato workers.

In 1951-52 - Melon strikes by Imperial Valley, Ca. farm workers are broken by the importation of braceros.

In 1954 - The National Agricultural Workers Union collapses as guest workers are used repeatedly to break the strikes of tomato, asparagus and carrot workers.

In 1959 - Braceros are used as strikebreakers in the peach fields in Stockton, California.

In 1960 - The Agricultural Workers Organizing Committee loses a strike at the Cochran Tomato Company when braceros are brought in.

In 1961 - A strike by Imperial Valley lettuce workers is broken by braceros.

UFW EXPERIENCE SINCE THE END OF THE BRACERO PROGRAM  
UNDOCUMENTED WORKERS AND H 2's

It was only after the Bracero Program ended in 1964 that farm workers were able to organize their own union and sign contracts. Now that unionization is more widespread, growers are more intent than ever on finding a docile, controllable workforce.

We have had many experiences involving Union Busting and hiring H 2's or undocumented workers when domestic workers were clearly available.

I would like to submit for the record newspaper articles and work contracts signed by the Department of Labor, 1978 in Presidio, Texas. Unemployment in this part of Texas, the Rio Grande Valley, was at that time the highest in the State. The United Farm Workers submitted 1700 names, addresses and telephone numbers of domestic farm workers who were ready to pick crops in the Presidio area. None of these workers were contacted and those who showed up on their own were denied work. Instead Mexican H 2 workers were hired.

The H 2 workers were hired by the Griffin and Brand Company. Subsequently the H 2 workers went on strike because the Company refused to pay them \$2.97 per hour; refused to pay their transportation costs (5 cents per mile) and refused to give the workers their \$5 housing allotments. No toilet facilities were provided and they had no cold drinking water in the 100 degree heat.

Two other cases involved the firing of legal workers in favor of undocumented workers in San Diego County:

Kawano vs. UFW - The United Farm Workers held an organizing campaign and had also held an election which we had won. The workers were all fired. The UFW proceeded to file suit and win the case. The Company appealed to the Supreme Court and lost. The California ALRB is presently trying to determine the amount of back wages owed the farm workers. I have requested the ALRB decision on this case.

Ukegawa vs. UFW - In this instance the workers were fired before the union had a chance to hold an election. This travesty of justice has been aired on National Public Television.

On the East Coast we have had many instances of domestic workers being fired in favor of Caribbean workers during the apple harvests. In 1975, the UFW housed Puerto Rican farm workers in Washington D.C. who were denied work and could not get home.

Within the past month the United Farm Workers received a letter from the Philippines informing us that Filipinos are being recruited to go to the Salinas Valley area of California. Attempts like this have been made in the past to destroy our organizing efforts in the Salinas valley.

UNSCRUPULOUS RACIST EMPLOYERS

The United Farm Workers of America believes that the same growers who exploited workers during the days of the Bracero Program have since become very wealthy. These same growers would use their wealth and power to attempt to have the President do their bidding by reinstituting slavery. While they were trying to prevent unionization in previous years, we believe these growers are now trying to bust the Union.

In 1976, Senator Hubert Humphrey told the U.S. Senate, "Organized labor in this country has stood for defense of this nation, a strong defense. Organized labor has stood for the health care of the American people. It stood for Workman's Compensation. It stood for Unemployment Compensation. It fought for Social Security. The standard of living in this country for the unorganized worker is due in a large measure because of the efforts of organized labor."

All these things that the beloved Senator spoke of are those things which the agricultural employers would destroy for the American farm worker. U.S. agribusiness which is increasingly dominated by large corporations and conglomerates is ever resisting the right of farm workers to be covered by unemployment benefits, workman's compensation, social legislation, and the right of farm worker children to get a decent education.

The United Farm Workers Union believes that the American farm worker should be hired and should be allowed to benefit from the rights and protections of the laws of this country.

UNEMPLOYMENT

Since I last testified before this Subcommittee on September 30, 1981, unemployment has risen a percentage point. Unemployment is now up to 8% with eight and one-half million Americans unemployed, the largest number since 1939. This number has increased by one million in the past three months alone.

Unemployment among minorities has reached fifteen and one-half percent and our experience has been that it is about 50% among the nations

Minority youths in rural areas. These teenagers should be able to be put to work in their own surroundings at a decent wage and not have to migrate to the cities where there are already too many unemployed workers. If they could get jobs, there would be less of them in trouble for lack of better things to do.

In 1893, Samuel Gompers, known as the father of organized labor said, "What does labor want? We want more school houses and less jails, more books and less guns, more learning and less vice, more justice and less revenge. ---We want more---opportunities to cultivate our better nature."

In other words, today we might coin a very similar phrase ---  
WE WANT JOBS --- NOT JAILS.

The United Farm Workers of America pays decent wages, has Cost of Living Allowances, the Robert F. Kennedy Medical Plan, pension plan and pesticide protection. Where there is no union we know tha domestic farm workers would work for minimum wage.

WHAT DOES THE UFW of AMERICA, AFL-CIO SUGGEST THAT THE GOVERNMENT DO

The U.S. Govenment should have an intensive program - spending it's resources to recruit domestic workers at the prevailing wage that exists in that area.

The United Farm Workers would concur with the Select Commission on Immigration and Refugee Policy that:



- 1) The application process should be streamlined.
- 2) Remove incentives to employers - Require employers to pay FICA and unemployment insurance to H2's. Maintain certification by DOL
- 3) Government, employers and Unions should cooperate to end dependence of any industry on H2.

The Subcommittee ought to keep in mind, however, our Union's history and believe that domestic farm workers are ready to work, and that unscrupulous agribusiness employers should not be allowed to recruit foreign slaves. Domestic workers meaningfully engaged in farm labor, earning a decent wage, and living a fruitful life will benefit the whole of American Society.

**TOM MILLER**  
**P.O. Box 50842**  
**Tucson, Arizona**  
**85703**

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March 9 1983

Chairman Romano Mazzoli  
Subcommittee on Immigration, Refugees, and  
International Law  
Committee on the Judiciary  
2137 Rayburn Building  
Washington, D.C. 20515

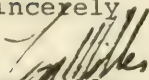
Dear Chairman Mazzoli:

At the suggestion of Congressman Morris Udall, I am submitting the enclosed op-ed piece about immigration legislation, to be included with the transcript of your hearings on the 1983 immigration bill. The article appeared in the October 5, 1981, New York Times.

As I have travelled the entire length of the 2,000 mile U.S.-Mexico border many times, I would be pleased to discuss any aspect of the current legislation with you, your staff, or the full committee if you wish.

Please let me know when transcripts of your hearings, including the enclosed, are available to the public.

Sincerely,



Tom Miller

602/628-7799

BRACERO PROGRAM NO. 3

By Tom Miller

TUCSON, Ariz. — President Reagan's new immigration proposal is certain to be a topic of conversation for the 10 United States and Mexican border-state governors who meet in El Paso, Tex. today and tomorrow.

The Reagan proposal, scheduled for hearings this fall in the House and the Senate, is packaged to appeal to the widest audience.

It calls for strengthening the Border Patrol and fining employers who knowingly hire workers who enter the United States illegally. This will please 65 percent of the public, who, according to an Associated Press-NBC News poll last August, want tougher restrictions on immigration. It offers an opportunity to foreigners here without residency papers to remain and eventually enter mainstream America, which sounds humanitarian. It lacks the much discussed national worker identification card, which satisfies civil libertarians. And it calls for an experimental program to import 50,000 "guest workers" from Mexico, which gives the impression of regulating the south-to-north traffic in humans.

The Reagan program, however, fails to address the problems that plagued the last two bracero programs, from 1917 to 1922 and 1942 to 1964: abuse of the imported worker.

For the first four years of the second program, the Mexican Government blacklisted the state of Texas, refusing to allow campesinos ('field workers') to contract for work there "because of the number of cases of extreme, intolerable racial discrimination." Even today, when brutality against Mexican field workers anywhere in the United States is discussed in Mexico, it is called *sadismo texano* -- "Texas-style sadism."

The migratory patterns of workers coming up from Mexico's interior to pick crops in the United States Southwest dates from before the mid-19th century, when the land was all Mexico and, before that, New Spain. The patterns continued through the mid-1920's when the border was first patrolled, and despite efforts to stop migration these patterns are still as natural as the eddies in the Rio Grande and "dust devils" in the Sonoran Desert, along the border. To double law enforcement on the border will not significantly reduce migration; conversely, a sizable cutback in border patrolmen will not noticeably increase the numbers.

Historically, *braceros* -- "contract workers" -- have been used to break strikes and to maintain poor working conditions and low wages for all agricultural workers. In both earlier *bracero* programs, Government enforcement of the wage scale was so lax that employers established virtually whatever pay they wanted. The Reagan Plan contains no guarantees that this will not be repeated.

The Carter Administration, without a comprehensive policy of its own toward newcomers, created a commission to study immigration and refugee problems. Mr. Carter's people lacked an understanding of the situation as a whole, despite their concern for the plight of Mexican farm workers in the United States.



The Reagan Administration, on the other hand, shows great compassion for those who own and manage the great agribusiness holdings in California and elsewhere. They want their fields tilled and their crops harvested by the most efficient and least expensive equipment, whether mechanical or human. In this free-market approach to labor, the new program benefits them by furnishing a cheap, steady source of nonunion field workers.

The new bracero program will almost certainly encourage new illegal migration. Tens of thousands of workers will be attracted to the border to take part; most of those who don't become "guest workers" will enter on their own. Coupled with the declining value of the peso - now worth less than 4 cents - and general patterns of unemployment, migration to the United States will increase, and border towns will bulge still further.

The Reagan plan fails to take into account the forces that compel Mexicans to temporarily leave their homeland and travel north. It institutionalizes current patterns in migration but neglects the source. As such, it can do no better than equal the fate of the previous bracero programs.

---

Tom Miller is author of "On the Border: Portraits Of America's Southwestern Frontier."

*Liza Cheuk May Chan M.A., J.D.*

Attorney and Counsellor at Law



819 North Main Street, Apt. 8  
Crawson, Michigan 48017

TO: House Subcommittee On Immigration, Refugees, and  
International Law, Committee on the Judiciary

RE: H.R.1510 ("The Immigration Reform And Control Act of 1983")  
Subcommittee public hearings, March 1983

DATE: March 7, 1983

STATEMENT

I am in favor of the immediate passage of the Immigration Reform And Control Act of 1983, as introduced by Congressman Romano L. Mazzoli on February 17, 1983. In particular, I find section 302 of the bill a most appropriate and supportable complement to the legalization program and a necessary component of a bill whose objective is the comprehensive reform of our immigration laws and policies.

Section 302 updates the so-called "registry date" contained in 8 USC 1259 to January 1, 1973. That statutory provision, stated simply, permits an alien to, at the discretion of the Attorney General, have created a "record of lawful admission for permanent residence," if it is not otherwise available, when the alien can demonstrate that: (1) he is not inadmissible under other enumerated provisions of the Immigration and Nationality Act; (2) he entered the United States prior to January 1, 1973 (under the present law, the "registry date" is June 30, 1948); (3) he has continuously resided in the States since such entry; (4) he is a person of good moral character; and (5) he is not ineligible to U.S. citizenship. 8 USC 1259 has been a part of our immigration laws since 1929, and the registry date was last updated in 1965.

There are at least six sound bases for supporting the passage of section 302 of this bill. In the first instance, as proponents of the bill wage this admirable campaign to overhaul our immigration laws so as to better cope with our current problems in this area, they took cognizance of the many illegal aliens already within our borders. Hence, in proposing to henceforth heighten our efforts at curbing illegal immigration, the bill grants "amnesty" to illegal aliens who have been here for some years. A similar argument can be made for those legal nonimmigrant aliens who have been here for a substantial number of years, but who have been denied the opportunity for becoming permanent residents solely because of the huge backlog of immigrant quotas created by our present system of immigration laws. In now redefining and perhaps limiting legal immigration, this bill ought to likewise give due consideration to those longtime legal aliens, and equitably address the quota backlog situation by utilizing the mechanism available under our present law and updating the eligibility date to January 1, 1973.

Secondly, the rationale for the legalization program is equally, if not emphatically more so, applicable to updating the registry date so as to grant permanent resident status to certain longtime lawful nonimmigrants. Congressman Hamilton Fish, Jr., stated to this Subcommittee on March 1, 1983, that we must respond "realistically and humanely to [the] plight" of the illegal aliens; as we "act with firmness to deter future illegal entry, we must display compassion in our treatment of those aliens who have become a part of our society." Similarly, as we re-order our priorities to become more selective with respect to legal immigration in the future, we likewise ought to display certain compassion and understanding in accepting into our folds those who have continuously resided in this country--albeit lawfully as nonimmigrants--who are desirous of obtaining lawful permanent resident status but for the quota backlog.

Thirdly, these longtime nonimmigrant aliens do in fact deserve special consideration at this juncture and the benefits afforded by section 302. A threshold criterion of that section is that they must have continuously resided here since at least January 1, 1973. That translates into an at-least-ten-years of continuous residence. If the illegal aliens, who are now being considered for "amnesty," can be deemed a "part of us" by their residence since January 1, 1977, then these other aliens to be benefitted by section 302 surely must be considered well integrated into our society. Clearly, section 302 serves a genuinely laudable purpose of welcoming those aliens who are de facto contributing and law abiding members of our society by virtue of their longtime continuous residence in and substantial tie to this country. It is also reasonable to conclude that most if not all of these legal nonimmigrants are financially established or have marketable skills, are educated, or are members of the professions. I make this observation as one of the basic requirements for the issuance of nonimmigrant visas is substantiated financial resourcefulness or support, or a legitimate offer for gainful employment. Hence, by enacting section 302, we are welcoming a group of law abiding, educated or skilled aliens who are well assimilated into our communities and who will continue to contribute to the betterment of our society.

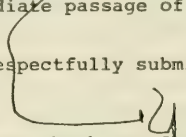
Without section 302, this bill, and especially the legalization provisions, would be remiss in appearing to be biased in favor of the illegal aliens, at the expense of lawful, longtime nonimmigrant aliens. Stated conversely, illegal aliens--whatever their "plight"--stand to be rewarded with the benefits of lawful permanent resident status in spite of (or because of) their unlawful entry and residence, while legal nonimmigrant aliens are punished for their stupidity in not entering this country illegally in the first place. How can one rationally justify such an odd result?

Extending to nonimmigrant aliens who have been here since at least January 1, 1973, eligibility for receiving permanent resident status will not unduly burden our job market. As noted above, a number of these aliens may already be gainfully employed, and have been so for a number of years. Hence, no sudden displacement of American workers will result from their being recognized as permanent residents. Furthermore, the number of aliens who can qualify for relief under this provision will be relatively small (see, attached "Appendix A," excerpted from House Report No. 97-890, Part 1, 97th Cong., 2d sess., p. 213). Their numbers are almost insignificant compared with the number of illegal aliens encompassed by the legalization program.

Lastly, section 302 has the added advantage (over, for example, a second "amnesty scheme" for these legal nonimmigrant aliens) of ease of implementation. The mechanism, personnel and procedures for administering and implementing this provision are already in place and proven practicable.

For all the reasons above, I strongly urge the continued support for section 302 of this bill, and the immediate passage of the bill.

Respectfully submitted,

  
Liza Cheuk May Chan  
919 North Main Street, Apt. 5  
Clawson, Michigan 48017  
(313) 356-7100

Attachment

cc: All members of the House Committee On The Judiciary (w/ attach.)  
All Representatives from Michigan (w/ attach.)



II. Record of permanent admission under the Act of August 8, 1958, and under Sec. 249 (pp. 79-80), the Registry Provision of the current Immigration and Nationality Act, as amended in 1965. (Source: INS, Annual Reports, Table 4.)

	<i>Number</i>
Period (1959 to 1981) .....	44, 106
1959 .....	4, 321
1960 .....	4, 773
1961 .....	5, 037
1962 .....	3, 399
1963 .....	2, 680
1964 .....	2, 585
1965 .....	2, 064
1966 .....	2, 595
1967 .....	3, 195
1968 .....	2, 148
1969 .....	1, 565
1970 .....	1, 520
1971 .....	1, 190
1972 .....	1, 653
1973 .....	1, 254
1974 .....	875
1975 .....	556
1976 .....	633
1976 (Transition quarter) .....	163
1977 .....	546
1978 .....	423
1979 .....	262
1980 .....	<sup>1</sup> 428
1981 .....	<sup>1</sup> 241

<sup>1</sup> Provisional.

NOTE.—Most aliens registered in period 1959-81 also entered before 1924 as a result of the great volume of immigration that preceded that year.

*Volume of legal immigrant admissions for comparative purposes*<sup>1</sup>

Period:	<i>Number</i>
1901 to 1930 .....	18, 638, 408
1931 to 1950 .....	1, 563, 470

<sup>1</sup> Number of illegal aliens unknown.

SOURCE.—INS Annual Reports Table 13.

APPENDIX "A"

1581 Colonial Terrace #101  
Arlington, VA 22209  
March 11, 1983

The Honorable Romano L. Mazzoli, Chairman  
Subcommittee on Immigration, Refugees and International Law  
United States House of Representatives  
Rayburn House Office Building  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your cordial letter of March 8 and your invitation to testify before your subcommittee on Monday, March 14, concerning H.R. 1510.

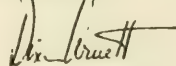
I regret that I cannot accept your kind invitation. I have, however, prepared a written statement which is attached and which I would be pleased to have you distribute to the members of the subcommittee and others you deem appropriate.

My statement represents my own personal views, based on my experience as the author of the California Illegal Alien Act, and does not necessarily represent the views of the Department of Health and Human Services in which I serve or those of the President or the Administration.

As you can see, however, I am concerned that some of the testimony which your subcommittee has received in opposition to the enactment of employer sanctions has been misguided, particularly in so far as some have attempted to suggest that my legislation somehow indicates that employer sanctions are not advisable. In fact, the reverse is true, in my opinion. Employer sanctions are not only advisable but are essential if the integrity of the purpose of H.R. 1510 is to be maintained and carried out.

Let me express my appreciation to you for the courtesy of your staff, particularly Mr. Peter Levinson, and the staff of Congressman Dan Lungren, particularly Kevin Holtzbaugh, in suggesting that I testify and in making the arrangements for you to receive the attached statement.

Sincerely,

  
Dixon Amett

attachment

STATEMENT BY DIXON ARNETT  
Former Member  
California State Assembly  
and author of  
The California Illegal Alien Act

---

Subcommittee on Immigration, Refugees and International Law  
March 14, 1983

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Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to submit this statement on an important National issue on which I have had some experience. My perspective is perhaps unique among your witnesses to date. In the early 1970s, as a member of the California State Assembly, I was the author of the so-called Illegal Alien Act. It was the first law of its kind in a major industrialized state. To say that the subject matter was as controversial then as it is for you today is to describe the atmosphere in mild tones. I know of no other issue about which the old saying, "Politics makes strange bedfellows", is more appropriate.

Please consider that the comments made here represent my own opinion based on my experience and do not represent the views, necessarily, of the Department of Health and Human Services in which I now serve or the President or the Administration.

---

I have been told that some who have testified before your subcommittee have suggested that the California Illegal Alien Act (Arnett Law) and similar laws which followed in other states, somehow tend to prove that sanctions against employers who hire illegal aliens (or undocumented workers) don't work. They have suggested that the experience in individual states argues against including employer sanctions in congressional bills under consideration. Such conclusions are a distortion of the facts, at least in California, and have no substantial evidence whatsoever to support them.

The fact of the matter is that in California the law was not ever given a chance to work at all. It was enjoined from becoming law by the courts after it was signed by the Governor (the same man who is now President of the United States). After the signing, the State Division of Labor Law Enforcement prepared a set of regulations (and even submitted them to the courts), but the courts, exercising not unanticipated caution, ruled that Federal preemption prevailed even though the California law was solely an amendment to the Labor Code and attempted no intrusion into the immigration field.

After the courts' rulings, the law remained in a state of legal limbo until, five years later, the United States Supreme Court ruled that individual states did, in fact, have the right to enact changes in their own labor laws regulating undocumented workers. In so doing, the Supreme Court remanded the matter to one of the courts of original jurisdiction (the Municipal Court in Santa Maria, California) for a final determination of compatibility with Federal labor law language. The original court has never made the final determination, however, because the plaintiff (a California farmworker and member of the United Farmworkers Union) could not be found and no State or County official was willing to act before the court in his stead. In addition, the California political landscape had changed in the intervening period and some of those who are suggesting to you now that the California law didn't work were those who had come to power and were busy insuring that the California law never had a chance to work.

It is, perhaps, significant to note that from the time the Governor signed the so-called Illegal Alien Bill into law to the time that the first court ruled on the issues of vagueness and constitutionality, there appeared to be a major diminution in the numbers of those illegally crossing the borders into California from the South. Such was the testimony of the man



then in charge of the Southern California Region of the Immigration and Naturalization Service. At the time, he brought records and figures to substantiate his claim, but the California Assembly does not keep records of such testimony as you do, so his notes would have to be retrieved from INS regional files, if available. As part of that testimony, INS officials concluded that it was the sanction against employers, contained in the California law, that caused sufficient concern among those who made their living at trafficking in illegal immigration and among employers well known for hiring large numbers of undocumented workers that the effect of redirecting the "traffic" to other states was immediate!

Such fleeting testimony (no matter how authoritative) may not be solid evidence that sanctions against employers are wholly effective. But neither, however, is the fact that the sanction required in California was never tried evidence that sanctions do not work or have any practical obstacles that cannot be overcome. In fact, I believe, as I did over ten years ago, that no law addressing this issue can be wholly effective without employer sanctions. It is abundantly clear that the very purpose for most of those who enter the United States illegally is to gain employment. Sometimes, in order to get here, they submit themselves to major human hardship and indignity. Often, once here, they are subject to conditions of employment not tolerated elsewhere in our Nation. If the attraction for those who come here illegally is removed or substantially reduced, then the traffic in illegal aliens will diminish. This cannot be done without employer sanctions in the law. Anything else is a fiction perpetrated by those who would prefer no law at all.

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While there are other facets of this issue which are part of your purview upon which I am tempted to comment, I have restricted my statement to that which concerns employer sanctions. However, I would beg the indulgence of the subcommittee to add two footnotes:

1. To whatever extent an article written by Ms. Kitty Calavita, a visiting professor at San Diego at the time she wrote the article, is used as indicating intent with respect to the legislation I authored as a part of testimony before the subcommittee, I would ask that the members not accept indicated conclusions therefrom without reading the article. I assisted Ms. Calavita in her research; my files were made available to her. She wrote a fine monograph, well researched in the best academic tradition. I do not agree with all her conclusions, but her monograph does not suggest that employer sanctions do not work. In fact, she is quite precise about the history of the Arnett Law. What she does show with accuracy and detail is that I and my colleagues fully recognized the inadequacy of a state acting alone on this issue and that there was never a doubt in our minds (or that of the Governor, now President) that Federal law was preferable. In further fact, that is what I said before Mr. Rodino's subcommittee over ten years ago at the time that Mr. Rodino was offering his legislation on the same subject.

2. My own familiarity with this issue, along with my later four years of service on the Commission of the Californias, leads me to believe that this Nation, acting in good faith as I believe you will, cannot fully address this matter without the help and support of other nations, particularly Mexico. Mexico has tremendous population burdens and unemployment pressures. No modern President of Mexico can act as an enforcement agent on the Mexican side of the border for a law enacted solely in the United States. There are over 60 million people in Mexico, half of whom are under the age of fifteen. By the turn of the century there will be 100 million people in Mexico and still half will be under fifteen. Unemployment is rampant in spite of new natural resource discoveries. The pressures are intense; thus, what is done here in this country cannot be done in a vacuum.

This is not to say that the Congress cannot, and ought not, enact that law which is deemed most beneficial to the United States. I hope you do move forward with speed, but I also hope that compassion and understanding will motivate you to instruct officials elsewhere in our government to engage their counterparts in Mexico and other countries to bring about mutual agreement so that the interests of our neighbors and their people are served as well.



會總利福人華美全  
NATIONAL CHINESE WELFARE COUNCIL

131 Van Ness Centre  
4301 Conn. Ave., N.W.  
Washington, D. C. 20008

Washington Office  
Telephone: (202) 686-1638

March 30, 1983

Honorable Romano L. Mazzoli  
Chairman  
Subcommittee on Immigration, Refugee  
and International Law  
U. S. House of Representatives  
Washington, D. C. 20515

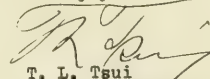
Dear Representative Mazzoli:

I have the honor to submit for the record  
of your Subcommittee a copy of the comments and  
suggestions of the National Chinese Welfare  
Council to Bill H. R. 1510 on immigration  
reform and control.

Your favorable consideration of our  
position will be greatly appreciated.

With high esteem,

Sincerely yours,

  
T. L. Tsui  
Executive Secretary  
Washington Office

Enclosure



NATIONAL CHINESE WELFARE COUNCIL

COMMENTS AND SUGGESTIONS TO THE BILLS INTRODUCED  
BY REPRESENTATIVE MAZZOLI (H.R. 1510 on February  
17, 1983) AND SENATOR SIMPSON (S. 529, February  
14, 1983), WHICH, IF ENACTED, WILL BE KNOWN AS THE  
'IMMIGRATION REFORM AND CONTROL ACT OF 1983'

The National Chinese Welfare Council is a nation-wide organization, incorporated in Washington, D.C., in 1957. It is not a 'welfare organization' generically speaking. It's purpose is solely for the promotion of the well being of Chinese Americans and Chinese nationals in the United States. The membership consist of the Chinese Consolidated Benevolent Associations or similar organizations in all the cities in this Country. The Chinese Consolidated Benevolent Association in each and every principal city in this Country is the umbrella organization of the Chinese organizations in the local American community, such as Hoy Sun Ning Yung Benevolent Association, Yeong Wo Benevolent Association, Sue Hing Benevolent Association, and so forth.

The National Chinese Welfare Council is in favor of the legislation to permit adjustment of status of certain entrants before January 1, 1980, and the creation of special quotas for the immigration investors. However, the Council opposes the elimination of quotas of certain children of permanent resident aliens, and brothers and sisters of American citizens. It is also against the retention of colonial quota of 600 per year for Hong Kong native citizens.

I. The Council is in favor of Title III - Legalization, Section 301(a) ... "Adjustment of Status of Certain Entrants Before January 1, 1980, to That of Person Admitted for Temporary or Permanent Residence":

(a) Section 245A (a), an alien who establishes that he entered the United States prior to January 1, 1977, and has resided continuously in the United States in an unlawful status since January 1, 1977, can adjust his status to a lawful permanent resident status.

It must be noted at this point, that in his Bill, H.R. 6514 introduced in the 97th Congress on May 27, 1982, Mr. Mazzoli proposed the date 'prior to January 1, 1978' instead of January 1, 1977, in the present Bill, H.R. 1510. The Council recommends the retention of the date, January 1, 1978.

(b) Section 245A (b), an alien who establishes that he entered the United States prior to January 1, 1980, and has

resided continuously in the United States in an unlawful status since January 1, 1980 can adjust his status to that of an alien lawfully admitted for temporary residence.

Furthermore, the Attorney General, in his discretion and under such regulations as he may prescribe, may adjust the status of any alien, who had acquired lawful temporary resident status, to that of an alien lawfully admitted for permanent residence, if the alien applies for such adjustment during the six-month period beginning with the thirty-seventh month that begins after the date the alien was granted such temporary resident status.

Again, it must be noted in his Bill of 1982, Mr. Mazzoli proposed 'beginning with the twenty-fifth month', instead of the 'thirty-seventh month' as set forth in his present Bill. The Council recommends the retention of the date "twenty-fifth" month.

This Title - Legalization will grant amnesty and lawful status to many illegal aliens in the United States, and help resolve a serious problem that has not been solved for many years.

II. For the past four or five years, the Council has been proposing the creation of special quotas for the immigration of foreign investors to be admitted into the United States for permanent residence, regardless of place of birth, of color, race or creed, as an investor will establish and increase our foreign trade, stimulate our economy, create jobs, and so forth. Now Senate Bill, S. 529, under Title II, Reform of Legal Immigration, Part A - Immigrants, Sec. 202. Preference and nonpreference allocation systems, has established a new preference category for investors. Qualified immigrants who have invested, or established to the Attorney General their intention to invest, substantial capital (in an amount set by the Attorney General and not less than \$250,000.00) in an enterprise in the United States of which the alien will be a principal manager and which will benefit the United States economy and create full-time employment for not fewer than four eligible individuals, other than the spouse or children of such immigrant shall be allocated visas.

III. We oppose to the retention of the colonial quota, which, we believe, is discriminatory. The colonial quota was originally directed at the colonies in the Caribbean so that the blacks would be restricted from immigrating. Since 1952, most of the colonies have become independent nations. However, the colonial quota of 600 per year for Hong Kong continues to be in effect, and has been over-subscribed, thus causing a backlog of up to 17 years. The Council recommends an increase of the Hong Kong quota to 3,000, and the natives of Hong Kong be allowed to use the unfilled quota of the United Kingdom.

IV. The Council is in favor of Updating registry date to January 1, 1973. See H.R. 1510, page 85, Line 19: "Sec. 302.(a) Section 249 (8 U.S.C. 1259) is amended -(1) by striking out "June 30, 1948" in the heading and inserting in lieu thereof "January 1, 1973", and (2) by striking out "June 30, 1948" in paragraph (a) and inserting in lieu thereof "January 1, 1973". (b) The item in the table of contents relating to section 249 is amended by striking out "June 30, 1948", and inserting in lieu thereof - "January 1, 1973".

V. The Council opposes the amendment of Section 203 of the Immigration and Nationality Act, relating to spouses and children of permanent resident aliens, and brothers and sisters of American citizens.

Senate Bill, S.529, proposes that all children of permanent resident aliens, over the age of 21 years, who do not have an established priority date under Section 203(a)(2) of the Immigration and Nationality Act, and all brothers and sisters of citizens of the United States, that do not have a priority date established under Section 203(a)(5) of the Act, prior to May 27, 1982, shall no longer be eligible and can no longer enjoy the preference allocation for family reunion under the immigration laws of the United States.

If we were to look into the history of the immigration in the United States, our adult children and our brothers and sisters were always considered our close blood kin. The concept of universal love of men, blood kinship has a special spot in our hearts. Our Immigration laws have always recognized this finest concept of man. All mankind has the natural desire for reunification of the rest of the members of their family. Now why this sudden change? Does time dilute our relationship between us and our adult children? Does time dilute our relationship between ourselves and our brothers and sisters? Have our values changed?

To disturb Sections 203(a)(2) and 203(a)(5) of the Immigration and Nationality Act is a grave error. To do so, would inadvertently convey to the rest of the world that America has changed its value of family concept.

It must be further noted that in the proposed legislation, Preference Allocation for Family Reunification Immigrants, in the 2nd and 4th (formerly 5th preference) preference categories has set forth the cut off date, as of May 27, 1982, had received approval of a petition made on their behalf for preference status by reason of the relationship described in subsection (a)(2) and (a)(5) as in effect on such date. To use this date is not only unjust, but it violates the basic concept of our laws. A careful examination of the visa petition sections of the main offices of the Immigration and Naturalization Services at San Francisco, Los Angeles, New York, and so forth, will show a large back log of

present 5th preference visa petition cases. These offices due to lack of personnel or based on policies, first work on cases that have immediate visa numbers available, such as non-quota cases - spouses and minor children of citizens of the United States, and parents of American citizens. The present 5th preference cases of persons born in China or the Philippines, as their priority dates, are based on the filing dates, and not the dates of approval, and it normally takes about four or five years time before each of the prospective immigrant's turn will be reached under the quota, and so these cases are usually set aside. Therefore, it is quite normal, during the past few years, that when a person inquires about his pending 5th preference visa petition for his brother or sister, the answer is, "What is your hurry? You do not have to worry. The priority date is based on the date that your visa petition was filed with this office, and not the date of approval of the petition. If we approved the petition, it is forwarded to the American Consulate abroad, and it just remains in that office until the priority date is reached."

H.R. 5872 and S.2222, introduced by Representative Mazzoli, and Senator Simpson on March 17, 1982; and were re-introduced to the House of Representatives and Senate as H.R. 1510 and S. 529, respectively, this year. After the Bills, H.R. 5872 and S. 2222 were introduced, hundreds and hundreds of people have been flooding to the Offices of the Immigration and Naturalization Service to file visa petitions for their brothers and sisters. Are we to say that because the 1982 bills had a cut off date of March 1, 1982; and the present S. 529 has a cut off date of May 27, 1982, that the Immigration and Naturalization Service after receiving the visa petitions, should merely set them aside, doing nothing further, and just wait, then upon passage of the bill to throw the petitions in the waste paper baskets. Of course not. The Service must work and adjudicate these petitions, and if possible, clear them out as fast as they are received.

The Council recommends that the beneficiary of a visa petition submitted and filed with the offices of the Immigration and Naturalization Service, pursuant to the provisions of Sections 203(a)(2) and 203(a)(5) of the Immigration and Nationality Act, prior to the date of the enactment of the Immigration Reform and Control Act of 1983, upon approval of the visa petition made on his or her behalf, shall enjoy all the benefits under the provisions of said Immigration and Nationality Act.

VI. We are also under duty to oppose the particular section of the Bills which impose civil and criminal sanctions on employers of aliens unauthorized to work, for the following reasons:

1. It brings home to us a memory of those early days when caucasian Americans in California violently rejected Chinese as workers. This page in the History of California is one that no American can be proud of today.



2. It creates new operational difficulties for Chinese American merchants. A desire to help out the financially distressing young scholars in pursuit of higher education in this country is natural and admirable. Chinese scholars have made substantial contributions toward progress in the field of science and technology.

3. It affects the chances of Americans of Oriental origin seeking legitimate employment. The general public are not experts in the field of immigration laws, and cannot distinguish one paper from the other. To obtain the necessary information from the Immigration and Naturalization Service would take months. In the meantime, the position will be filled by another applicant.

Dated: March 22, 1983.

March 16, 1983

MEMORANDUM

TO: House Judiciary Committee /

FROM: American Civil Liberties Union

RE: Civil Liberties and the Undocumented Alien:  
The Case for Legalization

"The existence of a large illegal migrant population within our borders violates the basic concept that we are a nation under law and this cannot be tolerated. The costs to society of permitting a large group of persons to live in an illegal status are enormous. Society is harmed every time an undocumented alien is afraid to testify as a witness in a legal proceeding -- which occurs even when the alien is the victim -- to report an illness that may contribute a public health hazard or disclose a violation of U.S. labor laws." 1/

The plight of the undocumented/illegal alien poses one of the most difficult dilemmas in the debate over immigration reform. Variouslly estimated at between 3.5 and 6 million persons, and growing at an annual rate of one-quarter to one-half million new individuals, 2/ the existence of a large and expanding "shadow class" of persons outside the law presents major contradictions for a democratic society. In practical terms, the solution to the problem will involve significant economic and political considerations. Moreover, it will also involve an important rights and liberties dimension.

The inability of the undocumented alien to avail himself of the law's protections for fear that its punishments will also be felt in the form of swift deportation from the United States, has created a class of persons for whom basic civil

liberties and civil rights have little meaning. Yet, because of their seamless involvement in critical economic and social aspects of American life, the exclusion of undocumented aliens from the body politic also has a corrosive impact on rights and liberties of citizens and permanent resident aliens; immediate examples come to mind within the criminal justice system, labor-business relationships, public education and public health areas. The resolution of the dilemma of the undocumented alien has become one of the major civil liberties issues of our time.

The problem of illegal migration to the United States is complex. The Select Commission on Immigration and Refugee Policy characterized the problem as the single most pressing issue it faced during its deliberations. For the undocumented alien, the benefits of migration to the United States usually distill into basic and compelling considerations: opportunities for employment, family reunification, exercise of individual freedoms not permitted at home, and for some, escape from political persecution. The United States remains a magnet for both economic and political refugees, an historical fact dating back to the founding of the country.

In seeking a solution to the present undocumented alien problem, policy-makers have concluded that only three realistic options exist. Diego C. Asencio, Secretary for Consular Affairs, Department of State presented the considerations most bluntly 3/:

Careful analysis shows that there are three, and only three possible courses of action to

deal those who are already here: (1) ignore the situation allowing illegals to remain in their current status because of inadequate enforcement of present law while their numbers grow; (2) massively round up and deport those here illegally; and (3) devise a procedure through which to legalize those who have established themselves in the United States.

The first option would prove destructive in the long-term; the second option would prove wholly unacceptable on civil liberties grounds. As the Select Commission noted, attempts at massive deportation would be destructive of domestic liberties, costly, likely to be challenged, and in the end, ineffective.

The last time in United States history when such a massive deportation effort occurred was in the mid-1950s when the Immigration and Naturalization Service (INS) expelled or deported more than one million aliens. This was done at tremendous costs in terms of both money and personnel. More importantly, it violated the civil liberties and rights of many Mexican Americans who were rounded up illegally for forcible repatriation to Mexico. Such an effort would not be tolerated today.

Hence, legalization -- accompanied by a more effective enforcement mechanism -- is the only viable solution for the undocumented alien population. Legalization of the undocumented is not an "amnesty" as is often implied. The thrust of the proposal is guided by principles supporting the rule of law, not "forgiveness" of the illegal alien.

Through a legalization program, the government seeks:



- To eliminate the illegal subclass now present in the United States, a situation which results in the exploitation of this segment of society and the depression of U.S. wages and working conditions.

Qualified aliens would be able to contribute more to U.S. society once they come into the open. Most illegal aliens are hard-working, productive individuals who already pay taxes and contribute their labor to this country. Any adverse impact of their presence in the economy has already been absorbed;

- To concentrate the limited enforcement resources of the Immigration and Naturalization Service on new illegal entry or visa abuse.

Legalization would enable the INS to target its enforcement resources on new flows of illegal aliens, and avoid devoting limited investigative resources to cases which involve aliens who claim equities under the law; and

- To allow dependent employers to continue to use this labor force lawfully. 4/

Legalizing the undocumented alien advances the protection of civil liberties and civil rights.

Civil liberties interests can be found in at least two elements of the supporting rationale for a broad legalization program. One major interest involves the broad concept of equality before the law. Another interest involves the right to freedom of belief, expression and association in the context of labor-business relationships.

#### Affirmative Civil Liberties Interest in Promoting Equitable Access to Public Benefits for Undocumented Aliens

The right of aliens to receive various kinds of public benefits is in flux. For aliens who are "lawfully admitted for permanent residence," the trend is clearly, although not

absolutely, to strike down the barriers against their right to receive government benefits at the state level. The primary vehicle for this effort has been the Equal Protection Clause of the Fourteenth Amendment. In Sugarman v. Dougall, 413 U.S. 634 (1973), the Supreme Court invalidated on equal protection grounds a New York law restricting lawful resident alien participation in certain benefit programs. But, in Graham v. Richardson, 403 U.S. 365 (1972), the Court upheld similar restrictions on federal programs. The Court reasoned that because the Constitution grants the Congress plenary authority in immigration matters, it enjoys greater latitude than the states in regulating the presence of resident aliens.

For aliens who are in the United States illegally, the statutes and policies are mixed. The right to certain governmental benefits - for example, police and fire protection - seems axiomatic with the constitutional protection of life, liberty and property. So too would the right of an indigent alien to receive life-saving benefits such as emergency hospitalization and medical treatment, generally provided by local governments. In recent decisions the Court has further extended the protections of the Equal Protection Clause by requiring access to publicly financed education for the children of illegal aliens, Plyer v. Doe, 457 U.S. \_\_\_\_, 50 U.S.L.W. 4650 (June 15, 1983). In Plyer the Court made clear that undocumented aliens are "persons" within the meaning of the Fourteenth Amendment:

Appellants argue at the outset that undocumented aliens, because of their immigration status,

are not "persons within the jurisdiction" of the State of Texas, and that they therefore have no right to the equal protection of Texas law. We reject this argument. Whatever his status under the immigration laws, an alien is surely a "person" in any ordinary sense of that term. Aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" guaranteed due process of law by the Fifth and Fourteenth Amendments. Shaughnessy v. Mezei, 345 U.S. 206, 212 (1953); Wong Wing v. United States, 163 U.S. 228, 238 (1896); Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). Indeed, we have clearly held that the Fifth Amendment protects aliens whose presence in this country is unlawful from invidious discrimination by the Federal Government. Mathews v. Diaz, 426 U.S. 67, 77 (1976).

The analysis extending state benefits to a resident alien or undocumented alien population has so far generally not been followed by the Congress. Thus, Congress has restricted or otherwise regulated the access of undocumented aliens to various public benefits sponsored by the federal government, including food stamps (see, Food Stamp Act Amendments of 1980, 7 U.S.C. Sec. 2015(f) and 7 C.F.R. Sec. 273.4); indigent legal services representation (see, Continuing Resolution H.J. Res. 599, Oct. 1, 1982); school lunches (Omnibus Budget Reconciliation Act of 1981, P.L. 97-34, Sec. 803); and Aid For Dependent Children (AFDC) programs (Social Security Act, Sec. 402(a), 42 U.S.C. Sec. 602(a) (33), as amended by the Omnibus Budget Reconciliation Act, P.L. 97-34, Sec. 2320).

These restrictions reflect a congressional intent to restrict social benefits to persons who are citizens or who entered the country legally. The only implication one may draw from these restrictions is that the Congress believes

that undocumented aliens contribute little in taxes to support the general economy and/or is a drain on services disproportionate to their contribution.

The evidence from studies prepared for the Select Commission refutes both suppositions. This research suggests that there is generally low use of social services by undocumented aliens for reasons such as those previously mentioned, as well as fear of deportation if the alien applies for the program. Moreover, these same studies suggest that payment of federal and/or state taxes by undocumented aliens "may more than offset the cost of providing health care and other social services."<sup>5</sup>/ The denial of benefits necessary to the basic sustenance of life of some persons, while comparable benefits are afforded by government to others, has constitutional significance insofar as the requirements of equal protection and due process are concerned.

Affirmative Civil Liberties Interest in Resolving Effects of Undocumented Aliens on the Labor Market

The impact of undocumented migration on the labor market is of major importance in 1) the displacement of U.S. workers, 2) depression of wages and working standards, and 3) curtailment of the enforcement of fair labor standards legislation.

Protected aspects of freedom of association such as the right of employees to organize and bargain collectively and the right to strike over disputes concerning terms or conditions of employment are profoundly affected by a large, exploitable sub-group in the work force. Surely the rights of legal workers



are affected when the undocumented status of fellow workers and their fear of deportation, inhibit the exercise of otherwise protected rights.

What are the consequences of this denial of rights? While not all undocumented aliens experience abuse, most experts agree that serious problems exist. An undocumented alien who testified at a Select Commission hearing described his experience:

They say that because we do not have U.S. papers we are not entitled to protection by the U.S. Constitution. Because of this we are often paid low wages and are forced to live and work in subhuman conditions. In Florida we work carrying 100 pound bags up ladders that are sometimes 20 feet high. If we fall from a ladder or are otherwise injured on the job we rarely receive workmen's compensation. Many undocumented workers in Florida live in small house trailers that accommodate more than 20 workers, and often pay high rent for such living space. 6/

Difficult conditions, however, are also found in many urban settings. A labor leader at another Commission hearing described conditions in the New York garment industry:

During the last year our organizers have located over 500 small, nonunion garment shops in the Bronx, the second smallest borough of New York City. Additionally they found over 200 small shops in Manhattan, and they estimate that there are several hundred more in Brooklyn and Queens. Conditions in these shops vary somewhat, but in virtually all of them, workers are paid poorly, and the work environment is far from humane. Minimum hourly wages and nonexistent.... Homework, the scourge of our industry 70 to 80 years ago, has returned with a vengeance.... Basic health and safety standards are completely neglected in the new sweatshops. 7/

The differential in wages between the home countries of most undocumented/illegal aliens and the United States may make these aliens less concerned than their citizen counterparts

about the actual level of their U.S. wages. The potential threat of apprehension and deportation may also make undocumented/illegal workers more willing to work for lower wages. At the Select Commission hearing in Los Angeles, a representative of the International Ladies Garment Workers Union (ILGWU) told of instances where employers, whom he cited specifically, used the Immigration Service to intimidate workers:

Daisy of California: A supervisor spreads a rumor of a possible INS raid. Out of a work force of 130, only six remain working. Several days later, company announces a pay reduction and erosion of benefits.

High Tide: A strike occurs. INS arrives and 17 pickets are apprehended, detained and , by evening, deported.

California Sample: One hour before another federal agency, the National Labor Relations Board, is to conduct an election, INS van parks near dock within full view of employees as company spokesman speaks of impending INS raid.

Hollander Manufacturing: Three days after an election in which the company lost, INS raids the plant picking up all union supporters. Retaliation or coincidence? When questioned, INS produces a letter on company stationery requesting the raid. 8/

Although it should again be noted that not all employers of undocumented/illegal aliens are guilty of such practices, abuses of working conditions and wages do exist. 9/

#### Recommendations and Conclusion

The ACLU views the enactment of a legalization scheme as one of the most urgent tasks facing the Congress. We believe that such a program must be consistent with the following principles:

1. All aliens who have continuously resided in the United States since January 1, 1982 should be eligible for the legalization program;

2. all aliens eligible for legalization should be granted permanent resident status and the temporary resident provisions of the bill should be deleted;
3. all legalized aliens granted permanent resident status should be granted the full rights and privileges accorded permanent resident aliens under current law;
4. state and local governments should be provided impact aid, pursuant to an appropriate formula, to assure that the legalization program does not unfairly burden state and local taxpayers in certain areas of the country; and
5. that persons eligible for the program be granted one year from the beginning of the program to apply to legalize their status.

We are prepared to work with the Congress for the speedy enactment of legalization which embodies these principles.

The long-term consequences of a growing undocumented alien population seem clear:

- Institutionalization of a double standard of due process and equal protection for a growing alien population, with concomitant litigation growing out of that contradiction;
- Growing disrespect for the legal system generally, and a specific lack of regard for an immigration law which penalizes those who obey it and wait their turn to enter the United States;
- Displacement of U.S. workers, whether actual or perceived, would become stronger among those most directly affected -- the young, relatively unskilled racial minority populations -- exacerbating ethnic tensions and employer discrimination and
- Dilution of the entitlement to government benefits and to voting representation for communities in which large numbers of the undocumented may reside, but where their numbers cannot be counted for purposes of determining a community's "fair share" of these benefits.

For all of these reasons, fair and effective measures should be adopted to curtail the settlement of new persons in this class and to alleviate the existing backlog of undocumented aliens. Given the limited number of viable options available for resolving the backlog, it is in the national interest and consistent with civil liberties objectives to support a broad legalization proposal as a crucial element of immigration reform.



## FOOTNOTES

1. Legalization of Illegal Aliens, 1981: Hearings before the Subcommittee on Immigration and Refugee Policy of the House Committee on the Judiciary, 97th Cong., 2nd sess. p. 121(statement of Doris M. Meissner, acting Commissioner, Immigration and Naturalization Service, Department of Justice, October 28, 1981)
  2. "The number of illegal aliens already in the country is unknown. The Select Commission on Immigration and Refugee Policy uses the figure of 3.5 to 6 million as the best guess of 1978." U.S. Congress, House, Report of the Committee on the Judiciary, U.S. House of Representatives, H.R. 890 97th Congress, 2nd Sess., 1982. p. 31
  3. Legalization of Illegal Aliens, 1981: Hearings before the Subcommittee on Immigration and Refugee Policy of the House Committee on the Judiciary, 97th Congress, 2nd Sess. p. 17 (Statement of Diego C. Asencio; assistant secretary for Consumer Affairs, Department of State, October 29, 1981)
  4. U.S. Congress, Senate, Report of the Committee on the Judiciary, U.S. Senate on S. 2222, S. Rept. 485, 97th Congress, 2nd Sess., 1982, p. 19 (citation refers to underlined passages).
  5. Fred Arnold, "Providing Medical Services to Undocumented Immigration: Costs and Public Policy," International Migration Review 13 p. 711 (Winter 1979)
  6. Anonymous undocumented/illegal alien, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Miami, December 4, 1979.
  7. Jay Masur, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, New York, New York, January 21, 1980.
  8. Phil Russo, unpublished testimony, public hearing before the Select Commission on Immigration and Refugee Policy, Los Angeles, February 5, 1980.
  9. Forbes, Susan, "The Half-Open Door: Illegal Migration to the United States" in U.S. Immigration Policy and the National Interest, Staff Report of the Select Commission on Immigration and Refugee Policy, April 30, 1981 pp. 540-551
- See also, Fred Arnold, "Providing Medical Services to Undocumented Immigration: Costs & Public Policy," International Migration Review 13 (Winter 1979)

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## MEMORANDUM

March 16, 1983

TO: House Judiciary Committee

FROM: American Civil Liberties Union \*

RE: Immigration: Asylum, Exclusion, and Deportation

## Introduction:

This memorandum sets forth the ACLU's concerns regarding the Asylum, Exclusion, and Deportation provisions of the "Immigration and Control Act of 1983" (H.R. 1510). Two other memorandums set forth our concerns regarding the employer sanctions and legalization provisions of the legislation.

## Overview:

The ACLU supports reform of the current administrative and judicial process for determining the bona fides of aliens seeking entrance to the United States. As we testified before the House Judiciary Committee last year concerning H.R. 5872, we recognize that the current process is cumbersome and inefficient and that the growing administrative backlog of asylum cases is both a burden on the government and on those entitled to asylum who are forced to wait, often held in custody, for determinations to be made in their cases.

However, we also testified that it is essential to recognize that asylum claims are literally matters of "life or freedom." No administrative burden or backlog of cases can justify truncated administrative or judicial review in cases involving persons who may be threatened "on account of race, religion, nationality, membership in a particular social group, or political opinion" if returned to his or her home country and is therefore entitled under our law to asylum.[1] This law includes our treaty

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obligations to refrain from refoulement under Article 33 of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, a treaty to which we became a party in 1968. [2]

It is for this reason that we applaud the House Judiciary Committee for voting out of Committee last year and reintroducing this year legislation which establishes expedited and more efficient procedures for determining asylum claims while retaining significant due process protections, including (1) an independent administrative structure, (2) fair hearing procedures, (3) appellate court review of final orders in asylum and exclusion cases, and (4) the traditional right of habeas corpus. In all of these areas, the House version of the legislation constitutes a significant and necessary improvement over S.529 as introduced.

Unlike S. 529, the House bill recognizes the underlying fallacy of the twin set of assumptions that constitute the rationale for curtailing due process rights in asylum cases: (a) that clearing the current backlog of cases will contribute significantly to the "control" of illegal immigration and (b) that court cases brought under current law which the bill seeks to bar have created the backlog. Both assumptions are demonstrably untrue.

First, the number of undocumented immigrants in the United States today is estimated by the Senate Report on S.2222 to number between 3.5 to 6 million or more.[3] The backlog of asylum cases is 140,000--a very small percentage of the total illegal population assuming that all the asylum claimants are in the United States "illegally". [4] Eliminating the entire asylum backlog would hardly make a dent in the number of illegal immigrants in the country.

Second, court cases appealing or challenging administrative determinations and procedures are not responsible for the current backlog. As the House Judiciary Committee Report last year stated:

"The Committee is convinced that the abolition of judicial review of asylum determination would be unwise. Indeed, the facts support the position that administrative shortcomings, not judicial interference, has caused the enormous backlog in asylum cases....Today, it takes the State Department four months to respond to an INS request for a country condition report. In turn, over 70,000 asylum petitions are currently awaiting decision by INS. Comparing the number of court cases, one finds that in FY 1981 INS received over 63,000 asylum applications. Yet in that year there were less than 500 court cases

challenging exclusion or deportation orders. And of course, the vast majority of those court cases did not involve asylum at all. In short, it would be unfair to blame existing backlogs on the courts."[5]

However, we submit that H.R. 1510 does not go far enough in preserving essential due process protections. Like its Senate counterpart, H.R. 1510 (1) permits "summary exclusion" of aliens, (2) eliminates judicial review of denials of petitions to reopen or reconsider because of "changed circumstances" outside the context of a final order, and (3) bars "pattern and practice" suits in circumstances where petitioners should not have to exhaust administrative remedies. We believe amendments should be adopted to cure these fundamental deficiencies.

The court cases not only do not justify curtailing due process rights. They underscore the need for more protection of those rights. The "pattern and practice" lawsuits which the legislation seeks to curtail would not have resulted in lengthy and burdensome litigation if the INS had not systematically violated the due process rights of aliens, including failure to seriously consider the claims of asylum applicants, denial of effective assistance of counsel, failure to notify applicants of their rights under the law, and failure to afford aliens fair and impartial hearings. See, e.g., Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980), modified on other grounds, 676 F.2d 1023 (5th Cir. 1982); Laissez-Moi Vigile v. Sava, Nos. 81 Civ. 7372, 7371 (RIC), (S.D.N.Y., March 5, 1982); Orantes-Hernandez v. Smith, 541 F. Supp. 351 (C.D. Calif. 1982)

One rationale for Summary Exclusion is the Senate Judiciary Committee's assumption that a "significant portion of these persons (who make up the backlog) may be 'economic migrants' and thus not legally qualified for asylum." [6] Not only does this prejudice the cases, but it erroneously suggests that the backlog consists of Haitians and others fleeing primarily from economic hardships. Yet significant numbers of asylum applicants come from countries where strong cases may be made for refugee status. For example, INS figures show that 3,388 come from Poland; 12,636 from Nicaragua, 925 from Afghanistan; 369 from Hungary; 325 from the Philippines; 432 from Romania; and 18,921 from Iran. [7]

In sum, it is unwise, unjustifiable, and unnecessary to handle the asylum backlog by curtailing fundamental due process rights. Below, we will argue for restoring those rights and will offer amendments to accomplish this end. At the same time, we strongly recommend the retention of the administrative reforms and rights to judicial review contained in H.R. 1510 as the most effective way to handle the asylum, exclusion issue. Combined with the "temporary status" provisions for Haitians and



Cubans who make up almost half the current backlog of cases and the hiring of additional administrative personnel, we believe streamlining can be achieved without sacrificing the rights of aliens in the adjudication process.[8]

#### Summary Exclusion:

Section 121 establishes a procedure under which an alien who "does not have the documentation required if any to obtain entry to the United States" or appears not to "have any reasonable basis for legal entry" and "does not indicate an intention to apply for asylum under section 208" would be summarily "excluded from entry into the United States without a hearing." Such a determination would not be subject either to administrative or judicial review. (Sec. 122, 123)

The ACLU strongly objects to summary exclusion. First, this procedure is a significant curtailment of the rights of aliens available under current law, principally the right to present his or her case for admissibility or asylum at an adversarial hearing before an immigration judge with legal representation.[9] Second, it can lead to the exclusion of aliens who may have bona fide claims to refugee status under our laws and treaty obligations.

As the Immigration and Nationality Law Committee of the New York Bar Association points out in its Report on Summary Exclusion,

"A refugee who would experience persecution might be turned away from the border under the proposed procedures without any recourse simply because of an inability to articulate the reasons that persecution is feared or to persuade the inspector that the fear is well-founded or because he or she is afraid to speak to authorities." [10]

Quoting from the Handbook on Procedures and Criteria for Determining Refugee Status published in 1979 by the United Nations High Commissioner for Refugees (UNHCR), the New York Bar Association Immigration Committee points to the psychological, language and other barriers which may make it impossible for a refugee arriving at the border to establish his or her bona fides:

"It should be recalled that an applicant for refugee status is normally in a particularly vulnerable situation. He finds himself in an alien environment and may experience serious difficulties, technical and psychological in submitting his case to the authorities

of a foreign country, often in a language not his own....(Para. 190) An applicant may not be able to support his statements by documentary or other proof, and cases in which an applicant can provide evidence of all his statements will be the exception rather than the rule. In most cases a person fleeing from persecution will have arrived with the barest necessities and very frequently even without personal documents...(Para. 196)

A person, who, because of his experiences, was in fear of the authorities in his own country may still feel apprehensive vis-a-vis any authority. He may therefore be afraid to speak freely and give a full and accurate account of his case. (Para.198)"[11]

RECOMMENDATION: We recommend that the examining immigration officer be required to notify arriving aliens of their right to counsel and that the notice be in writing and in the language of the arriving alien.(Amendment 1 To Be Supplied)

First, we note that the right to counsel exists in any exclusion or deportation hearing under current law and that the proposed legislation does not seek to abrogate that right. [12] The Immigration and Naturalization Service today provides lists of free legal services available to indigent aliens.[13]

Second, because these are matters of "life or freedom", we think there is nothing else short of retaining current law to insure that bona fide asylum claims are presented. See Orantes-Hernandez v. Smith, 541 F. Supp. 351 (C.D.Calif. 1982).

#### Reform of Asylum Procedure:

RECOMMENDATION: To insure fair and impartial asylum hearings, we strongly urge the Committee to retain the administrative structure and procedures contained in H.R. 1510.

First, the House bill establishes a USIB appointed by the President with the advice and consent of the Senate and authorizes the Chairman to appoint specially trained administrative law judges. (Sec. 122) This insures both independence and necessary expertise in sensitive asylum matters.

Second, the House asylum procedures (Sec.124) improve on those contained in the Senate bill in the following significant ways:

- (a) set time limits to expedite proceedings which are not unduly burdensome on applicants when considered in

combination with the right of an alien to reopen an asylum determination on broader grounds of "changed circumstances" than provided in the Senate bill (see below);

(b) provides for the release of aliens on parole in cases where they are not responsible for hearing delays;

(c) explicitly provides that applicants "shall be advised of the privilege of being represented by counsel";

(d) requires hearings to be recorded "verbatim" and a transcript to be made available not later than 10 days after the completion of a hearing;

(e) permits an alien to secure an asylum hearing even though (1) time limits have passed, (2) his application has previously been denied, or (3) have an administrative judge reopen a proceeding after a determination if he or she can show that in the interim "changed circumstances have resulted in a change in the basis for the alien's claim of asylum." This is a particularly important difference from the Senate bill which limits changed circumstances to "changed circumstances in the country of the alien's nationality." The Senate bill ignores the possibility that material facts may come to light in the United States which would have led to a different result had they been known at the time of the determination (for example, circumstances may not change in a country but more facts become known that would lead to a conclusion that a particular person's life or liberty would be threatened by returning him to his country of origin) or that the conduct of the person after the determination may put his life in danger (for example, the applicant has performed acts or stated opinions which are unacceptable to authorities in his country giving rise to a well-founded fear of persecution); [14]

(f) gives the administrative law judge additional discretion to grant an asylum hearing if "the interests of justice require the consideration."

#### Judicial Review of Asylum, Exclusion, and Deportation Orders:

We strongly endorse the House Bill's provision permitting circuit court review of final orders in asylum and exclusion cases. Because of the gravity of the issues at stake and the fact that court cases are not the primary cause of the current

administrative backlog, we concur in the judgement of the House Judiciary Committee last year that the curtailment of judicial review in the Senate bill (limited to a writ of "habeas corpus under the Constitution" pursuant to Sec. 123) is far too severe. While the present process, involving federal district court and then appellate court review of final orders is cumbersome and duplicative, we believe judicial review of the merits of the administrative decision is necessary and warranted.

**RECOMMENDATION:** Judicial review should also include review of denials of petitions to reopen or reconsider because of "changed circumstances" outside the context of a final order. (Amendment 2 To Be Supplied) This right available under current law is eliminated by the House bill (Sec. 123(b)(3))

We recognize that multiple stays based often on frivolous motions have been used to delay execution of final orders, sometimes resulting in delays of several years in the departure of aliens not otherwise entitled to stay in the country. However, it must also be recognized that deserving cases do arise after final orders are entered. See *Sida v. INS*, 665 F.2d 851 (9th Cir. 1981); *Ravancho v. INS*, 658 F.2d 169 (3rd Cir. 1981). An alien may only then obtain the assistance of counsel or material facts may come to light which would entitle an alien to asylum. Again recognizing that these cases account for only a fraction of the current backlog (about 300 such appeals were filed in 1981-1982), some adjustment should be made to insure that deserving cases are reviewed. Rather than rule out judicial review altogether, the Committee should instead provide for review but develop an expedited procedure for screening out nonmeritorious motions brought only for purposes of delay.

#### **Habeas Corpus and Pattern and Practice Litigation:**

We strongly endorse the House bill's retention of traditional Habeas Corpus jurisdiction. Section 123(b) incorporates the "right of habeas corpus under chapter 153 of title 28, United States Code" which confers jurisdiction to address violations of Constitution, statute, or treaty. The Senate Bill, by limiting habeas corpus petitions to "the right of habeas corpus under the Constitution" is needlessly ambiguous in suggesting that statutory or treaty violations may not be reviewed. The House version also explicitly provides that petitions may be "based upon custody effected pursuant to... (the Immigration and Nationality Act," and may be brought "individually or on a multiple party basis as the interests of judicial efficiency and justice may require." (Sec. 123(b)) This is preferable to the Senate version which attempts to accomplish the same result by Report language rather than in the legislation itself.[15]

However, the House bill rules out "pattern and practice" litigation which is an essential tool in insuring due process



protection for asylum applicants. The House Report states that "there is to be no judicial review of any aspect of the asylum process" until an order of exclusion or deportation has been finalized. This is unjustifiable, both in view of the fact that these cases (few in number) are not responsible for the current backlog and have been essential in terminating unfair and often unconscionable administrative violations of due process. See Haitian Refugee Center v. Civiletti, 503 F. Supp. 442 (S.D. Fla. 1980), modified on other grounds, 676 F. 2d 1023 (5th Cir. 1982), in which the district court ruled that the asylum adjudication process had been perverted in connection with a government Haitian Program designed to expel Haitians without regard to the individual circumstances of their cases. If the House bill had been the law of the land, Haitians and Salvadorians would have had to endure wholesale violations of their rights until administrative remedies had been "exhausted." See Orantes-Hernandez v. Smith, 541 F. Supp. 351 (C.D. Calif. 1982).

**RECOMMENDATION:** We strongly recommend that the legislation be amended to explicitly provide for "pattern and practice" suits and specify that petitioners need not exhaust agency proceedings when (1) the agency cannot supply an adequate remedy; (2) the agency action will cause irreparable injury; (3) the agency has exceeded its statutory authority; or (4) pursuing an administrative remedy would be futile. [16] (Amendment 3 To Be Supplied)

Aliens placed in circumstances such as the Hatians or Salvadorians should not be required to exhaust administrative remedies before challenging clear government patterns and practices of denying them rights under statute and the Constitution. Again, this litigation accounts for only a fraction of the backlog, and the backlog is the fault of the government for its practices and not the fault of petitioners whose rights have been violated. (See Overview Supra)

#### Access to Information:

Section 124(c) of the bill, added by amendment on the floor last year, authorizes a blanket denial of access under the Freedom of Information Act to all federal agency records or proceedings concerning requests for asylum, refugee status, withholding of deportation or any other relief arising from a claim of persecution on account of race, religion, political opinion, nationality, or membership in a particular social group.

The intent of the provision is to allay fears that persecuting authorities may obtain access to the information and use it to the detriment of asylum applicants. We support the intent of the provision but believe it sweeps far too broadly.

First, it would prevent individuals who are themselves the

subject of such proceedings from obtaining access to any of the records generated by their own requests for relief. They may even be denied access to information which they themselves provided. We doubt that this result was intended by the drafters.

Second, it would bar third parties, such as the press and human rights organizations, from obtaining information necessary to monitor the asylum process. If the purpose is to protect the confidentiality of sensitive applicant records, it should be noted that the Freedom of Information Act already exempts "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy." 5 U.S.C. 552(b)(6).

However, since there may be some question whether the sensitive records here are exempt under FOIA, a narrow amendment could clarify the exemption of this information without denying third parties information about the way in which asylum, refugee status, and similar proceedings are conducted.

RECOMMENDATION: The House Judiciary Committee should adopt an amendment which exempts the information, but makes the exemption inapplicable to first-party requests and to third party requests to the extent that the information does not reveal sensitive information which reasonably could be expected to disclose the identity of an applicant for asylum. (Amendment 4 To Be Supplied)

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1. INA Section 243(h). See Refugee Act of 1980 (Pub. L. 96.212, 94 Stat. 102)

2. 19 U.S.T. 6257, T.I.A.S. No. 2322, 606 U.N.T.S. 268

3. Immigration Reform and Control, Report of the Committee on the Judiciary United States Senate on S. 2222 (Report No. 97-485) (June 30, 1983), p. 4.

4. INS Servicewide Totals, September 1982

5. Immigration Reform and Control Act of 1982, Report of the Committee on the Judiciary House of Representatives 97th Congress (Report 97-890 Part 1 September 28, 1982), p.53

6. Senate Report Supra, p. 4

7. INS Servicewide Totals, June 1982

8. Section 301 establishes temporary status for Cubans and

Haitians.

9. See 8 U.S.C. sections 1158, 1225, 1226, 1362.

10. Report on the Summary Exclusion and Judicial Review Provisions of Pending Legislation to Amend the Immigration Laws by the Immigration and Nationality Law Committee of the Association of the Bar of the City of New York (Nov. 1982, p. 4

11. New York Bar Report, pp. 5-6

12. 8 U.S.C. Section 1362

13. See 8 C.F.R. Sec. 236.2, 242.1(c)

14. Comments by the Office of the United Nations High Commissioner for Refugees on the Immigration Reform and Control Bill of 1982, H.R. 6514

15. Senate Report pp. 12-14

16. See New York Bar Association Report for Discussion of Exhaustion Case Law and "Pattern and Practice" Recommendation



WASHINGTON OFFICE

March 16, 1983

MEMORANDUM

TO: House Judiciary Committee

FROM: American Civil Liberties Union

RE: Employer Sanctions and Civil Rights

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The "Immigration Reform and Control Act of 1983", H.R. 1510, relies on employer sanctions as the central mechanism for deterring the entry of undocumented aliens into the United States.

Section 101 of H.R. 1510 would make it illegal for "a person or other entity. . . to [knowingly] hire, recruit or refer for employment in the United States" any "unauthorized alien," defined as an alien who is neither lawfully admitted for permanent residence in the United States nor authorized to work by the Attorney General. It would also be illegal to hire, recruit or refer such individual without first verifying that individual's work eligibility, and for any person or entity to continue to employ an alien upon learning that the alien is or has been "unauthorized." An employer may establish an affirmative defense to a charge of knowingly hiring, recruiting, or referring unauthorized aliens by demonstrating "good faith" compliance with the bill's requirements for verifying the employment eligibility of such aliens.



During the first three years after enactment of the legislation, verification of employment eligibility would be governed by the bill's "transitional" verification program. Under the transitional program, proof of work eligibility would consist of a valid U.S. passport or one document from each of the following categories:

1. social security card or United States birth certificate; and
2. alien documentation, identification and telecommunications card issued by the Attorney General, drivers license or other state issued I.D., or any other document approved by the Attorney General for such purposes.

Both the job applicant and the person recruiting, referring or hiring an individual would be required to sign a form, under penalty of perjury, attesting to the individual's work eligibility and to the fact that the person who recruited, referred, or hired the worker examined the requisite documents establishing the individual's work eligibility. The form is to be retained for inspection by the INS or the Department of Labor for three years after the recruitment, referral or hire, and one year after the termination of the employee (whichever is the longer period). However, the employer of three or fewer employees is exempt from the attestation requirement of the bill.

Within three years, the transitional program would be replaced by a "secure" verification system developed under direction under direction of the President. In considering possible changes or additions, the President shall consider

use of a telephone verification system. Nothing in this subsection shall be construed to authorize the issuance or use of national identification cards.

Although the bill gives the President broad discretion to fashion a secure verification system, it also requires that any such system must comply with the following limitations:

1. Personal information utilized by the system shall be available to government agencies, employers, and other persons only for purposes of determining whether an individual is an unauthorized alien;
2. Verification of an individual's work eligibility may not be withheld for any reason other than that the individual is an unauthorized alien;
3. The system may not be used for law enforcement purposes other than for enforcement of the employer sanctions program; and
4. If the system utilizes an employment identification card, the card may not be used for purposes other than determining work eligibility nor can any person be required to carry the card.

The bill essentially proposes a six month moratorium on enforcement (from date of enactment) for suspected violators. During the first year, expenditures are authorized for public education on the operation of the sanctions program.

An employer who is charged with a violation under the statute would be entitled to a hearing before an administrative law judge. An appeal may be taken to the Court of Appeals. The penalties for violation are a civil fine of \$1,000 per unauthorized alien for the first offense, \$2,000 per alien for the second offense, and up to \$3,000 and one year in prison for three or more violations. In addition, the bill empowers the Attorney General to bring suit in federal district court seeking an injunction or other appropriate relief against an employer who engages in a "pattern and practice" of knowingly hiring, referring or recruiting unauthorized aliens.

### Discriminatory Effects of Employer Sanctions

The fear of increased employment discrimination against minority citizens and lawfully admitted aliens is a key objection of the ACLU to the employer sanctions provisions of H.R. 1510. The failure of the legislation to provide an effective remediation scheme and civil rights protections only magnifies the concern.

The employer sanctions provisions would increase employment discrimination on several distinct levels. First, employer sanctions would foster the creation of a de facto "suspect classification" for Hispanics and persons of "foreign appearance." Because the problem of illegal immigration is perceived by many, albeit incorrectly, as a "Mexican problem" or as a problem of Central America and the Caribbean Basin, persons who share a common appearance with those from the region will invariably become suspect in the minds of employers. As to these individuals, the sanctions provisions would impose conflicting obligations on the employer which may prove difficult to reconcile: the obligation not to discriminate in hiring on the basis of an applicant's race or national origin; and the new obligation not to hire persons "unauthorized" for employment.

In an effort to minimize the conflict and to avoid the risk of the new obligation, some employers will undoubtedly adopt a simplistic solution of discriminatory exclusion of "foreign-looking" workers. In effect, the sanctions provisions may inadvertently foster a business incentive to discriminate by making it more "cost effective" to run the risk of employment discrimination, than to run the greater risk of employer sanctions.

Although the proposed transitional verification system purports to reduce the probability of employment discrimination, in practical application, it could engender increased discrimination. This may occur, particularly among small employers who do not wish to take chances with "foreign-looking" job applicants, through the use of more stringent documentation requirements than those imposed by law, or repeated challenges to the authenticity of documentation offered by minority citizens. The transitional verification system will be challenged by employers from the start; were it presumed effective, there would be little justification to support the need for a more "secure identifier" in the future. The discriminatory potential in these provisions is more subtle and pervasive than has previously been recognized.

The employer sanctions provisions of H.R. 1510 will also cause law enforcement discrimination. Current INS practices, as documented by the United States Commission on Civil Rights, suggest that workers likely to be considered undocumented would almost exclusively be Hispanics, Asians and blacks.<sup>\*/</sup> This discriminatory enforcement strategy will have additional undesirable consequences. For example, employers will be disinclined to hire, promote or train persons who may be subjected to disruptive and time-consuming status checks.

The basis of concern over discriminatory enforcement was particularly evident in the results of the INS coordinated enforcement effort known as "Project Jobs". Project Jobs was conducted

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<sup>\*/</sup> According to the Report of the U.S. Commission on Civil Rights, The Tarnished Golden Door, Civil Rights Issues in Immigration, 85 (1980), current INS investigations are conducted in a highly discriminatory manner. When INS agents conduct factory raids, they interrogate individuals solely on the basis of their skin color or ethnic appearance.



by the INS in nine cities between April 26-30, 1982. Investigations focused on locating illegal aliens who were employed in better paying jobs which might be attractive to unemployed citizens and permanent resident aliens. Nearly all of the approximately 5,500 persons arrested and detained by the INS were from Latin American and Caribbean countries. Approximately 4,900 of these individuals were Mexican nationals, while only one person each came from countries such as Canada, the United Kingdom and Australia. None were reported to be from other European countries.

Does this data suggest that there are no "illegals" from these countries in "high paying" jobs here in the United States? The background studies of the Select Commission on the sources of undocumented migration clearly refute this supposition. However, what the data may suggest instead is racial, geographic or industry-related targeting of enforcement by the INS. Such generalized "targeting" without benefit of warrant, consent, or exigent circumstances, invariably has a discriminatory impact on the Fourth and Fifth Amendment rights of minority citizens and permanent resident aliens; see Blackie's House of Beef, Inc. v. Castillo, 659 F.2d 1211 (D.C. Cir. 1981); see also, United States v. Cruz, 581 F.2d 535 (5th Cir. 1978).

In addition to encouraging discriminatory enforcement tactics by INS agents, the employer sanctions program would separately increase the incidence of discriminatory law enforcement abuses by local police officers. The program would create strong incentives for local police to routinely stop Hispanics and other minorities

and demand proof of their citizenship or immigration status. Despite their inability to make accurate determinations of immigrant status, local police are heavily involved in the enforcement of immigration laws, largely because of prompting from the INS. As a result of the programs, American citizens of foreign ancestry, even though not suspected of committing any crimes, would be exposed to repeated harrassment at the hands of local police. This would likely occur, notwithstanding the limitations on the use of the verification system proposed in the bill.

There are numerous examples of local police who systematically make investigative stops and arrest solely on the basis of racial and ethnic characteristics. In The Tarnished Door, Civil Rights Issues in Immigration, 91 (1980) the United States Commission on Civil Rights graphically describes one instance of abuse. In Moline, Illinois the city police department instituted a practice whereby its officers would enter local neighborhood establishments and interrogate persons of Latin ancestry about their status in the United States, although the overwhelming majority of those interrogated were United States citizens or legal resident aliens. The lack of sophistication and careless attitudes of many local law enforcement officers is illustrated by a trial transcript quoted at page 92:

- Q. Now is this the normal routine that you follow when you arrest Mexicans in Grand Praire?
- A. Are you speaking of an illegal alien or a Mexican?
- Q. Well, how can you tell the difference? Do you know what the difference is?
- A. No, sir. When I can't determine, that's why I put them in jail for investigative charges.

not prohibit discrimination by private employers on the basis of alienage. Espinoza v. Farah Manufacturing Co., Inc., 414 U.S. 86 (1973). Although Title VII renders national origin an unlawful basis of discrimination, the Court refused "to interpret the term 'national origin' to embrace citizenship requirements," and declined to find congressional intent to make discrimination against aliens in private employment unlawful.

The Supreme Court's decision in Espinoza means that Hispanics who are not citizens can be discriminated against under Title VII to the extent that the discrimination is based on requirements of U.S. citizenship. Thus, while Title VII's prohibition against national origin discrimination does bar discrimination against Hispanics in general, it does not bar an employer from denying employment to persons not believed to be citizens. This could provide an additional basis for camouflaging an intent to discriminate.

The future requirement of a presidential report to Congress on the discriminatory impact of employer sanctions and other monitoring devices offer little comfort. First, they have no direct impact on preventing actual discrimination in the workplace. Secondly, these reports are not tied to any explicit future action by Congress to remedy the illeffects which may be reported.

Employer Sanctions and Privacy

It has been suggested that both to avoid discrimination and to be effective, any new employer sanctions program must rely on a comprehensive work-eligibility verification system; it is argued that requiring all employees to provide "one-time-only" documentation of eligibility to work will reduce the temptation of employers to selectively discriminate based on the general appearance of the job applicant. Concerns that such a verification system could pose risks to liberty and privacy have been rejected by some as insubstantial. Because of their belief that employer sanctions are vital to the control of illegal immigration, proponents of the verification scheme are prepared to accept a new national information reporting system, with "appropriate restrictions" on its future use, as a cost incidental to the operation of an effective sanctions program.

However, the ACLU remains deeply concerned about the implications of the proposed verification system. In recent years we have taken a special interest in the issue of privacy as it relates to the maintenance and dissemination of personal information, with particular focus on the centralization of personal data by the federal government and the development of the Social Security number as a "universal identifier."

Every new use of the Social Security number is aimed at the creation of a reliable mechanism for personal identification. One approach is the development of a counterfeit-resistant identity document, such as an improved version of the Social Security card. Presumably, such a document would contain the



bearer's photograph, signature, perhaps other identifying data, and a code indicating the bearer's citizen or alien status--all verified by information in government databanks. It would have to be physically tamper-proof--for example, manufactured of materials that would shatter if an attempt were made to substitute another photograph or alter any of the data.

A different approach would dispense with the need for an identity document, such as a tamper-proof social security card, relying instead on a government databank of personal information filed under individual social security numbers. Users would submit forms on each person of interest, to be screened by government officials against records in the databank.

How does the growing use of the Social Security number as a universal identifier in the context of immigration reform threaten the right of privacy? First, in the case of an identity document, by creating a domestic passport implementing the government's already broad police power to stop, question, and search. Second, by creating what amounts to a national population registry, a government databank through which every individual's personal identity is established and validated. Third, through the certainty that this databank will begin to be used to further a variety of public programs and policies, and thereby become both an enormous repository of personal information and a means of tracking and controlling the lives of American citizens. And fourth, through the use of the Social Security number, by establishing a universal identifier that facilitates the matching and exchange of data among many different governmental and private record systems.

These are not merely projections of remote possibilities. Existing laws and record-keeping practices have already brought us perilously close to each of these eventualities.

#### The Social Security Card as an Internal Passport

The greatest danger of the growing number of mandated uses of the Social Security card as an identity document is that it tends to become a form of domestic internal passport. Certainly no one intends this result, and proponents of the identity card believe that they can take steps to prevent it. What they may not fully realize, however, is that the government's police powers to stop and search are already sufficient to transform the identity document into a major threat to privacy, freedom of movement and equal protection of the laws.

A look at some Supreme Court decisions over the last decade will illustrate the point. In two 1973 decisions, the Court ruled that an officer arresting a motorist for driving without a license or with a revoked license may search both the motorist and the vehicle. United States v. Robinson, 414 U.S. 218 (1973); Gustafson v. Florida, 414 U.S. 260 (1973). In both cases the search was precipitated by the motorist's failure to carry a valid document. Although six years later the Court struck down random spot checks of drivers' licenses and registrations, Delaware v. Prouse, 440 U.S. 648 (1979), it distinguished such searches from those conducted at U.S. borders or at specific checkpoints within the country. The Court has sustained document inspections at border checkpoints and their "functional equivalents," Almeida-Sanchez v. United States, 413 U.S. 266

(1973), United States v. Martinez-Fuerte, 428 U.S. 543 (1976), and stops by roving patrols for "reasonable suspicion" based on the physical appearance of the occupants of a car, United States v. Brignoni-Ponce, 422 U.S. 873 (1975).

In these cases and others in the lower courts, the police power has been defined as allowing government agents to stop individuals without any particular suspicion of a crime, to request identification, and to search, detain, or arrest people who cannot produce proper documents. The Supreme Court decisions just described are directly pertinent to proposals for turning the Social Security card into a national identity document. Since police powers to stop and question people to check identification are already very broad, a national identity document would serve as a blanket invitation for the police to exercise these powers frequently and to their fullest extent, at the expense of individual privacy.

#### Creating a Population Registry

With or without an identity card, a national databank of personal information will result from the growing use of Social Security numbers for identification purposes.

If such a databank is truly to serve as a reliable means of checking identification, it must contain current, verified personal information on each data subject. In addition to the Social Security number and other items commonly used to establish identity (date and place of birth, sex, former names, parents' names, etc.), this information would probably include a physical

description such as height, coloring, and race, perhaps some unique identifier such as a signature or photograph or even fingerprints, and a notation of status as a citizen or alien with permission to work.

The history of automated data systems over the last two decades shows clearly that:

- \*large personal data systems are nearly always adapted to purposes other than their originally intended uses, and
- \*techniques for the electronic matching and pooling of data in separate systems have created many of the characteristics, if not the physical actuality of a national dossier system.

One might list, almost at random, dozens of examples of new uses for once-restricted data system:

- \*As mentioned earlier, Social Security Administration files are used to identify "illegal aliens." See also, Social Security Administration request for a "New Routine Use" exception to the requirements of Privacy Act of 1974, Federal Register, Vol. 48, No. 32, 2/15/83.
- \*The Parent Locator Service, established pursuant to Title IV-D of the Social Security Act, allows child support enforcement officials to search "confidential" government and private record systems in order to trace absent parents who owe child support.
- \*Numerous state laws allow or actually require public and private employers to query criminal history data-banks, compiled originally for police use, in order to screen out applicants convicted of certain crimes, or simply to ascertain if applicants have arrest records.
- \*Internal Revenue Service records are checked to screen prospective jurors and to locate non-registrants for a military draft.
- \*The Veterans Administration and the Department of Health, Education and Welfare have matched their records against federal payrolls to find VA and student and loan defaulters.



\*The records of hundreds of federal and state public assistance programs have been matched against each other and against public and private employment rolls, to identify people receiving multiple benefits or benefits for which they are ineligible because of their earnings. Some states, such as New York and California, have even set up special wage reporting systems to make data on earnings more easily available for inter-agency matches.

\*In many states, detailed case records from publicly funded services such as mental health clinics, family planning programs, and services for handicapped children have been pooled in comprehensive "human services" or "family services" databanks, where they are used for a variety of purposes from fraud control to eligibility determinations to case management review.

\*Banks are required by law to preserve their customers' records much longer than they are needed solely in order to assure their availability for government investigations.

\*Apparently, we will soon see the implementation of current proposals for giving data from government records to credit reporting agencies in order to help the government recoup bad debts, for compiling Selective lists from Social Security and Internal Revenue Service records, and for pooling information on all federal assistance recipients into a single national benefits recipients databank.

Such examples as these do not constitute a "parade of horrors": it is not necessary to cite abuses like the violation of Census Bureau confidentiality during World War II to help the War Department find Japanese-Americans, or the political manipulations of tax and other government records that were exposed during Watergate. Many of these expanded uses are for purposes that most people would find at least rational, perhaps commendable. They demonstrate that personal data systems are useful for a wide variety of purposes beyond their originally intended parameters, and that such systems will, inevitably, be adapted to new purposes in accordance with developments and changes in public policy.

There is no reason to believe that a population registry would not follow the same course. For example, a databank already used to determine eligibility for employment on grounds of citizenship or alien status could easily be adapted to implement existing laws restricting the employment of convicted felons for certain kinds of jobs; such convictions could simply be coded into the system's database. The databank could also be useful in efforts to combat welfare fraud. If the database were expanded to include a notation of status as a welfare recipient, then the databank could automatically report the hiring of such persons to the appropriate welfare agency as a signal for cutting off benefits, and matches of the databank against various public assistance program rolls would simplify the identification of ineligible welfare recipients. If the registry contained identifiers such as photographs or fingerprints, it could be useful in apprehending criminal fugitives. It could also be an invaluable asset to the Parent Locator Service.

Through these and similar adaptations, a national population registry would unquestionably become, as an HEW Advisory Committee predicted a decade ago, a national dossier system.

#### Recommendations and Conclusions

In the past the ACLU has opposed the sanctions provisions contained in the legislation and we must continue to oppose such procedures. We do so on the grounds that they would lead inevitably to discrimination against some Americans and because they would almost certainly lead to an employee identity card

with serious civil liberties consequences. We also believe that the arrangements which have been proposed in the past will simply not work. Those employers who are engaged in the practice of hiring undocumented workers will, we believe, continue to do so.

We urge the Committee to consider carefully the evidence as to the effectiveness of this scheme. It is not sufficient to say that sanctions are necessary. A system which will not accomplish its purposes and which at the same time will give rise to discrimination and pose a massive threat to civil liberties is simply unacceptable.

We respectfully suggest that the Committee look to alternatives.

A new approach which we believe merits attention would focus on those employers who engage in a pattern and practice of hiring undocumented workers. Under this approach, it would be unlawful for employers intentionally to hire undocumented workers, but there would be no general requirement for the government to develop--and employers to inspect--a new secure form of identification. Rather, enforcement would center on firms found to engage in a pattern and practice of intentionally hiring undocumented workers. Any employer cited for such violations would then be required to report any new hiring to the government. Responsibility for enforcing the law would not rest with the INS but rather the officials having experience in enforcing employment laws. This unit would be also charged with insuring that enforcement of the law did not result in unlawful discrimination.

This approach would have the virtue of focusing the immigration enforcement effort on large employers with a clearly established record of employing and exploiting undocumented workers. It would thus eliminate the incentive for all employers to "play it safe" by discriminating against "foreign-looking" workers, and it would encourage large employers to comply with fair labor standards laws in order to avoid being targeted for close scrutiny as a suspected exploiter of undocumented workers.

The ACLU has asked a group of employment discrimination experts to work with us and other interested groups to see if this approach can be translated into a scheme which will actually accomplish the objective and do so without giving rise to discrimination or to a worker identification card. We hope that the Committee will not move forward so quickly as to foreclose careful consideration of this approach.

Pending the submission of the working group's recommendation, the ACLU offers the following preliminary suggestion. Assuming that imposing new legal obligations on employers will be part of any legalization program, the proposal should be designed to meet the following criteria:

- \*A new criminal statute should make it a crime to intentionally hire undocumented workers.
- \*There should be no requirement that all (or most) employers examine worker identification to determine that the worker is authorized to work in the U.S.
- \*The specific structures and procedures set up to monitor compliance should be focused equally on enforcing laws against discrimination and the new law against hiring undocumented workers.



\*Responsibility for administrative enforcement should rest with the Department of Labor, the Department of Justice, a combined task force of these two Departments or a new agency. It should not be given to INS.

\*Enforcement should focus on employers who engage in a pattern and practice of violating the law by hiring undocumented workers.

\*Those found by an administrative ruling to be engaged in a pattern and practice of illegal action should be subject to hiring verification and reporting procedures and administrative review designed to insure equally that the employer does not discriminate and does not hire undocumented workers.

\*There should be a procedure for a complaint to be brought administratively by workers, a union, or others alleging a pattern and practice of violation. Recourse to the courts should be available if the agency declines to act on a complaint.

\*Specific penalties should apply only to violations which occur after the special procedures (outlined above) are put in place against an employer.

We note with approval the general tenor of Part B, Sec. 111 of the bill which provides congressional endorsement for a "controlled and closely monitored increase in the level of the border patrol and of other appropriate enforcement activities of the Immigration and Naturalization Service to achieve an effective level of control of illegal immigration." As long as constitutional safeguards are followed at the border, such a recommendation from Congress (coupled with a meaningful level of appropriation) is a significant step toward effective control over the nation's borders.

In our view, such a recommendation for balanced border enforcement should be accompanied by an additional enforcement recommendation of the Select Commission, which urges "the increased enforcement of existing wage and working standards legislation. . . [and] supports the necessary increases in budget, equipment and

personnel that will allow the Department of Labor's Employment Standards Administration. . . to increase its efforts to monitor the workplace." Commission Report, II, B.2 at 70-71.

The Employment Standards Administration (ESA) is empowered by statute to restore back wages to persons who were paid below the federal minimum wage. Under the ESA program investigations are conducted against employers thought to be using undocumented workers. The object of these investigations is to make low wage employers aware that the minimum wage law is being enforced, and that it is being enforced with particular diligence on those known, or reasonably believed to be employing illegal aliens. Since such enforcement will impose on the employer the costs which he seeks to avoid by violation of the labor and working standards laws, his incentive to hire undocumented workers will be significantly reduced. Such an enforcement system would be more cost-effective than implementing employer sanctions and a work identification system, since it would be cheaper to use agencies already in place than to institute an entirely new and expensive system. More importantly, however, the increased enforcement of present wage and safety laws would not involve the widespread discriminatory impact and civil liberties erosion that appears to be inherent in an employer sanctions program coupled with a national work identification system.

If these provisions are tied to a "sunset" provision requiring Congress to affirmatively reauthorize employer sanctions statutes and to the creation of a Select Commission to further study the efficacy of employer sanctions provisions, the discriminatory effects of sanctions will be reduced.



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

April 4, 1983

Honorable Romano L. Mazzoli, Chairman  
Subcommittee on Immigration, Refugees,  
and International Law  
House Committee on the Judiciary  
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for your letter of March 2, 1983 to the Attorney General requesting the Department's response to certain questions with regard to the immigration reform legislation pending before your Subcommittee, H.R. 1510. The Attorney General has asked that I forward the attached responses which will be made a part of the hearing record on this important legislation.

Please don't hesitate to ask if we can be of further assistance in this matter.

Sincerely,

Robert A. McConnell  
Assistant Attorney General

GAO REPORT

1. A GAO Report on employer sanctions in foreign countries reveals that most of them have been ineffective because of the lack of resources for enforcement, as well as for the judicial processing of violators. How can you assure the Congress that this will not be the case here if this legislation is enacted?

As I have stated on many occasions this Administration intends to vigorously enforce any employer sanctions law which is enacted. We already have in place a cadre of INS investigators accustomed to visiting employment sites where there is reason to believe illegal aliens are employed and we will augment that force to the extent necessary to insure effective enforcement. It is also notable that under the legislation Department of Labor officers are similarly empowered to monitor compliance with the employer sanctions provisions.

More generally, I would mention that in my visits to France and Hong Kong last fall, I was pleased to learn that those governments do believe in the effectiveness of sanctions. The French, although historically not aggressive in their enforcement of employer sanctions, are now stiffening their enforcement. In Hong Kong these laws have always been firmly and effectively enforced and are a vital element of that country's immigration law.



LEGALIZATION

1. What is the rationale behind the Administration's desire to have a two-tiered legalization program rather than just a one-step process on a certain cut-off date?

The Administration believes that aliens who are otherwise admissible and have demonstrated an attachment to the United States through at least three years of continuous residence and self-sufficiency should be granted a legal status to remain in this country. However, we do not feel that permanent residency should be granted until persons have shown a much longer period (six years) of continuous residency and the ability to maintain themselves and their dependents.

The two-tiered program will allow the inclusion of a larger portion of the illegal population, while ensuring that persons are not given the benefits of permanent residency before they have adequately proven their commitment to be contributing, self-sufficient members of their communities.

2. Certain Members do not believe employer sanctions alone will accomplish the objective of reducing the employment of undocumented aliens. They are of the opinion that greater enforcement measures should be in place for a period of time before sanctions and legalization take place. Do you plan to have the Department move toward providing INS with additional personnel and funding prior to instituting sanctions or legalization provisions? If not, why?

In the summer of 1981, the Reagan Administration did submit an FY 1982 Budget Amendment to provide additional enforcement resources for INS. However, we have consistently maintained that increased enforcement resources alone will not allow us to regain control of our borders. We need an employer sanctions law to remove the strong incentive for illegal migration -- employment opportunities in this country.

3. There are certain waivable grounds of exclusion under Section 212(A). How do you propose to implement this waiver authority?

Applicants for legalization who require a waiver for some ground of inadmissibility would simply apply for that waiver at the same time that they filed their legalization application. Immigration personnel would make the final determination on the waiver in conjunction with their review and determination of eligibility for legalization.

4. Should the bill specifically allow or deny administrative and/or judicial review of a decision denying an application for legalization? What is the result of the bill's silence on this subject?

It would be our recommendation that the legislation acknowledge the extraordinary nature of the proposed legalization program and specifically limit administrative and judicial review to the extent possible. Certainly supervisory review of denials of legalization applications will be provided in any event, and consideration should be given to precluding judicial review.

The silence of the current bill likely means that legalization denials would be individually reviewable in U.S. District Courts under 8 U.S.C. 1329, subject to the probable requirement of exhaustion of administrative appeals, if any. Such denials may also be reviewable by habeas corpus under the interpretations in some jurisdictions.

5. Should this bill specifically authorize funding for the legalization program? What would be the cost of the program?

We do not believe that it is necessary for the bill to authorize any specific amount of funding for the legalization program. The cost estimates developed by INS are still in the process of review and amendments to the legislation could require further modification of those estimates.

The Administration will submit either an FY 1983 supplemental appropriation request or an FY 1984 budget amendment as soon as the legislation is enacted.

6. What is the role of the voluntary agencies in this program? Should they receive financial assistance for their participation? If so, for what types of services? Would it be on a per capita basis?

Voluntary agencies and other recognized organizations would assist the legalization program by disseminating information to the public within their areas of responsibility and by opening facilities staffed by their personnel where aliens could go to obtain application forms, specific information regarding their eligibility, and assistance in preparing and filing their applications.

These agencies and organizations should definitely receive financial assistance for their participation. They will be providing vital information, and clerical functions, which would otherwise have to be handled by government personnel. They will also provide or contract for space in which to establish legalization centers, which will both save the government money and permit a more rapid start-up of the program.

Their payments should be on the basis of applications received and processed through their facilities. This would be on a per capita basis, since all aliens, even if they are dependents will have to apply and establish their eligibility for either temporary or permanent resident status.



7. What administrative problems do you anticipate? Would a change in the effective date and/or program period be of assistance? What changes would you recommend?

First, it would be helpful if the legislation would allow the receipt of applications for legalization to begin no later than three months after enactment and then call for a twelve-month period of application under this program. The three-month delay is necessary to allow INS time to publish regulations, enter into contractual agreements, begin the public information campaign and make other preparations.

Secondly, we believe that the type of organization which may be designated by the Attorney General to assist in the receipt of legalization applications should be expanded to include other public and private organizations. This will insure that there is adequate outreach and support for this program in all necessary locations.

Finally, we believe that language waiving present requirements to negotiate through the General Services Administration for temporary rental facilities would be most helpful in facilitating the acquisition of the necessary office quarters to support the orderly receipt of legalization applications. The Immigration Service has previously been granted similar waiver authority to independently negotiate for buildings necessary for the detention of aliens.

8. Can you assure the Subcommittee that the implementation of the legalization program will not impede existing enforcement efforts or efforts to implement the employer sanctions and other enforcement provisions in this bill?

Yes, I can. The information/education campaigns for both the employer sanctions and legalization programs will begin at roughly the same time and the two programs should mutually reinforce one another. Employer sanctions will encourage qualified illegal aliens to file for legalization and the documentation of legal status which it will provide. The legalization program will encourage illegal aliens to come forward and secure legal status, thus removing the longer term aliens from the illegal population. As a result, the enforcement of employer sanctions after the end of the education period and other standard enforcement procedures will be made more effective by the siphoning off of those long term illegal aliens who are most likely to resist removal from the United States by relying on procedural delays and administrative relief for which they can apply -- all the time diverting enforcement resources which could be better used.

We contemplate no interruption of enforcement because of the legalization program. Certainly we will provide enforcement personnel with guidelines for handling aliens with a prima facie claim to legalization who are encountered prior to their having filed under the legalization program.

EMPLOYER SANCTIONS

1. The ABA last month opposed employer sanctions because they were alleged to be "unworkable and expensive." Specifically, the ABA background papers criticized the bill for failure to:

- 1) Specify exactly how INS will execute the investigation, detection and apprehension of employer violators;
- 2) Specify whether INS would have to obtain a warrant to inspect employer records; and
- 3) Grant INS any additional enforcement powers.
- 4) The ABA material further points out that "the already overburdened and understaffed INS hardly has the resources to investigate and prosecute even those cases where a violation may be suspected."

1) Preliminarily it should be noted that such specification in the statute itself is not consistent with normal drafting conventions. INS will pursue specific leads and concentrate its investigative resources on targets which meet established criteria for high enforcement impact. Investigative techniques which are currently in use will be augmented by the inclusion of inquiries conducted by DOL and INS to inspect employment eligibility verification records. Additionally, employer violators would not be apprehended in most circumstances since the initial stages of the progressive penalty structure provide for administrative fine proceedings.

Violators would only be subject to arrest in cases of repeated violations, where the U.S. Attorney has authorized prosecution or an indictment has been issued.

2) The statute requires that employer records be made available for inspection. Regulations will be published which clarify that records will be made available upon request for administrative inspection. The statute does not require a subpoena or warrant.

3) INS authority will be expanded to include the authority to initiate administrative, civil, or criminal proceedings against employers who employ unauthorized aliens. INS currently has authority to define classes of aliens who may be employed in the U.S. but can take no action against employers who disregard an unauthorized alien's status.

4) INS presently directs about 50% of its investigation resources to area control investigations at places where illegal aliens are believed to be employed. These resources will continue to be focused on such employment sites, but the investigation will generate a new outcome - in addition to expulsion proceedings against the alien INS will initiate employer sanctions proceedings. With regard to resources for this program, the Service has stated that it will enthusiastically begin its employer sanctions program with its present resources as soon as the statute is enacted. However, as I have mentioned before, we intend to provide additional investigative resources as needed.



2. The ABA also commented that convictions for knowing violations would be difficult to secure because of the "ease of forging the existing eligibility documents" and the "heavy burden in meeting the knowing requirement." Would you comment on these evidentiary issues and do you view them as a serious problem -- as the ABA apparently does?

The civil penalty provisions do not require that knowledge be established beyond a reasonable doubt. Once an employer has been served with a citation, and continues to hire aliens without checking documentation and in violation of law, we believe that a case will be made out that the violation was "knowing." In document fraud cases where the employer is implicated, experience with smuggling cases indicates that we will be able to secure the testimony of the alien and the intermediaries against the employer. In situations where the fraud does not involve the employer, we would not be interested in pursuing the employer sanctions fines, but rather would pursue the purveyors of the fraudulent documents.

3. Would you comment on the 4-step sanctions procedure and don't you agree that the citation stage would be helpful (in addition to the education program) since we are entering a new area of federal criminal law?

The legislation wisely provides graduated penalties. We believe the choice between injunctive remedies or criminal sanctions in cases of repeated violations is properly left to the discretion of the United States Attorney.

We do support the continuation of a citation stage for initial infractions of the law occurring after the education period. Although we intend to devote substantial resources to an informational campaign that should reach all employers, we can foresee circumstances in which "new" employers might act in ignorance of the law.

4. Under H.R. 1510, do you believe that a civil fine must become final (after opportunity for judicial review) before proceeding to the next civil fine or from the second civil fine to the criminal stage? Should the bill specifically allow movement to the next stage in the 4-step process immediately after issuance of the citation or assessment of the fine?

The bill should specifically allow movement to the next stage in the 4-step sanction process immediately after issuance of the citation or assessment of the fine. Otherwise, the process could be so prolonged as to have no deterrent effect.

5. What type of administrative and judicial review of sanctions should be made available to an employer?

We believe that a single level of administrative and judicial review should exist. Administrative fines should be reviewed by an administrative law judge (or immigration judge) without further appeal to the U.S. Immigration Board. However, the provision of HR. 1510 requiring that such hearings be conducted within 200 miles of the location of the alleged violation (or residence of the violator) should be deleted, as

it imposes an almost impossible administrative burden on the government.

Similarly, the legislation should make clear that one level of judicial review is all that is intended. If this subcommittee decides that the judicial appeal should be at the circuit court level, then the bill should specify that a finding for the government by the circuit court should constitute a final judgment requiring the payment of a fine and obviating any collection action by the government at the district level.

6. The civil fines in the bill are fixed. Will the absence of discretion in the person assessing the fines cause any problems? Does it prevent such person from tailoring the fine to the type of business, size of employer (housewife vs. GM) and the gravity of the offense? Would maximum fines be the better approach?

We do not believe that maximum fines would be a better approach.

The fixed nature of fines serves to eliminate the need for officials to arbitrate cases for mitigation of fines. It also avoids charges of discriminatory treatment by employers who state that their fines were set unfairly high.

In the instance of the criminal penalty arising in the fourth stage (or the third violation after the initial citation), fine amounts and the length of imprisonment are within the discretion of the District Court judge.

7. Some people have objected to the language in the bill which limits coverage to those "who refer for a fee." Can you comment on this limitation and doesn't this language effectively exempt union hiring halls and casual referrals?

We believe that substitution of the word "consideration" for the word "fee" is preferable and would expand the coverage to include union hiring halls which are regularly involved in employment referrals. Casual referrals would not be covered, unless there was some benefit that accrued to the referrer.

8. Do you foresee any problems with interpreting the bill to exclude independent contractors from coverage or should the bill be more specific regarding coverage of homeowners, using gardeners, handymen, etc.?

Independent contractors who employ four or more aliens would be covered by the bill. An individual who contracts with an independent contractor would not be responsible for the contractor's workforce unless the Government could show that the independent contractor arrangement was a sham, devised solely to avoid employer liability under the bill.

9. The Chamber of Commerce has suggested a targeted approach for employer sanctions. Is it desirable or possible to legislate a targeted sanctions program? Isn't this strictly an administrative/enforcement matter and isn't targeted enforcement a necessary result because of resource limitations?

It would be unwise to legislate a targeted sanctions program. Targeted enforcement should be an administrative decision and it necessarily results from the availability of resources.



INS intends to establish target criteria to achieve maximum enforcement impact. The Service is opposed to statutory definitions of targets, (with the exception of the practical elimination of employers of three or fewer employees), since that would inevitably create havens for illegal employment within those businesses not defined as targets.

Of course, there will be an effort to monitor all businesses through compliance audits of a random and/or systematic sample of employers.

#### ASYLUM

1. While the bill addresses in detail the handling of asylum claims by administrative law judges, it does not address the initial processing of these claims by INS. I would ask whether INS has any special plans to obtain specialized personnel or to provide special training to existing personnel with regard to the receipt and processing of asylum claims (particularly for those areas such as South Florida or the S.W. border and for those personnel in a supervisory capacity over the handling of asylum claims made by persons without documents -- i.e., expeditious exclusion).

INS is reviewing the administrative processing of asylum applications and it is likely that changes in the existing procedures will be forthcoming. INS has already given a special training course to 25 immigration examiners, who regularly handle asylum determinations. Another training program is contemplated when the review of the asylum procedures is completed and any new regulations have been published.

With regard to the training of INS personnel for identifying and responding to initial claims of asylum in the future, we, of course, would provide modified operating instructions and any required on-the-job training.

2. Shouldn't INS develop a special unit (without a law enforcement or border patrol background) to handle asylum claims here and refugee applications abroad? Shouldn't the Central Office be more involved in the processing of asylum claims (i.e., acting as clearing-house and referral for the State Department, issuing detailed guidelines and instructions, maintaining statistics, reviewing decisions by district offices), since it is unlike other adjudications which do not involve a national interest or international obligation?

As you know, during the last Congress the Administration proposed a specialized unit of asylum adjudicators within the INS. The legislation introduced during the last Congress did not adopt that approach, which the Administration continues to believe offers the best solution for handling asylum adjudications. In the absence of legislation, the INS intends to do what it can to streamline its administrative processing of asylum applications and to improve the training of asylum adjudicators. The INS has in existence, and is now in the process of upgrading, its Refugee and Parole Office which performs the basic functions set forth in your question.

FRAUD

1. Is it safe to assume that fraud will increase dramatically with the enactment of this bill in order to produce documents used in the employment verification process and in the legalization program?

Yes, we can assume that fraud in documentation to establish eligibility to work in the United States and to qualify for legalization will exist. Additionally, because of the number of illegal aliens already here who cannot legitimately qualify for legalization and therefore secure authorization to continue to work in the United States, the possibility for fraud will probably be greater than is now the case. The enhanced enforcement authority (employer sanctions) will cause many to return home, but will likely cause others, including new illegal entrants and overstays, to turn to fraudulent documentation.

2. What special efforts will be made to address this potentially serious problem? Will additional personnel and training be required to counter this problem?

In recognition of the anticipated increase in fraud, INS implementation plans call for expansion of fraud units monitoring the legalization process and to mount increased investigations directed at arrangers, vendors, and producers.

Legislation enhancing the authority to prosecute and increasing penalties on producers, vendors, and users of fraudulent identification documents was passed by Congress last year. This will definitely aid our efforts.

As fraud is detected through the screening of legalization documents or through the screening of suspect cases or the apprehension of newly employed illegal aliens information concerning the fraud will be collected and made available to all INS officers who will be reviewing future legalization applications or reviewing employment eligibility documentation during employment site visits. The Service maintains an excellent fraudulent documents intelligence program, to utilize and disseminate information about fraudulent documents and schemes.

3. Will INS have sufficient personnel to examine documents at the request of employers who may be suspicious of certain documentation presented to them by prospective employees? What priority will be assigned to this particular activity?

INS will establish a program for employers who report documents of a suspect nature. We will direct such employers not to make critical judgments of the authenticity of documents, but hire such individuals and request that INS make an audit of the documents.

INS will also continue to verify the status of lawful resident aliens who request such verification prior to seeking employment.

More importantly INS will handle, on an immediate basis, the request for verification of documentation from any



U.S. citizen or permanent resident or other alien authorized to work in the US., whose documentation has been mistakenly rejected by an employer.

#### FINANCIAL ASSISTANCE

1. This bill specifically prohibits public assistance for a certain period to legalized aliens. Can you comment on the constitutionality of this provision? Can you also comment on the constitutionality of the provision granting states the option of denying state or local benefits to legalized aliens?

The Office of Legal Counsel has assured me that both provisions are constitutionally sound.

Mathews v. Diaz, 426 U.S. 67 (1967), is the leading case on the issue of federal power to distinguish aliens from citizens in the welfare context. In Diaz, the Supreme Court made clear that while the Fourteenth Amendment prohibits the states from denying generally applicable welfare benefits to resident aliens, that no such restrictions bind the federal government. While all aliens "within the jurisdiction of the United States" are protected "from deprivation of life, liberty, or property without due process of law," Congress has "broad power over naturalization and immigration," and that power includes the authority to make legitimate distinctions between citizens and non-citizens. Id. at 78-80. The Court added:

In particular, the fact that Congress has provided some welfare benefits for citizens does not require it to provide like benefits for all aliens. Neither the overnight visitor, the unfriendly agent of a hostile foreign power, the resident diplomat, nor the illegal entrant, can advance even a colorable constitutional claim to a share in the bounty that a conscientious sovereign makes available to its own citizens and to some of its guests. The decision to share that bounty with our guests may take into account the character of the relationship between the alien and this country: Congress may decide that as the alien's tie grows stronger, so does the strength of his claim to an equal share of the munificence. Id. at 80 (emphasis in original).

2. The bill also grants the Attorney General the authority to provide certain types of benefits, such as emergency care to legalized aliens. How would this authority be implemented? On a case-by-case basis? By identifying certain programs and benefits that would be available? What difficulties, if any, do you anticipate in exercising this authority?

Although the authority to implement this program rests with the Attorney General, I would implement it in conjunction with the Secretary of Health and Human Services.

The Department of Health and Human Services has concluded that the exceptions to ineligibility for federal benefit programs contained in Section 245A(d) (2) (B) and (C) would likely amount to providing Supplementary Security Income assistance and Medicaid to legalized aliens who met the existing qualifications for these programs. While narrowed access for such legalized aliens might be constitutional, the

cost of establishing separate programs could be greater than the benefits achieved.

As I stated in my testimony, we believe that these exceptions to the general ineligibility for federal benefits should be deleted from the bill. Such assistance as is provided should come from state and local programs with shared federal support from a block grant/impact aid program.

#### ADJUDICATIONS

1. Would you comment in more detail on the Department's position that the Immigration Board should be subject to the Attorney General? Last year, the Department noted that "it is not clear that this structure would make the immigration law process more efficient or speedy." Please elaborate on this comment.

With the creation of the Executive Office for Immigration Review, the transfer of the immigration judges from the INS to that organization, and the appointment of a new Chief Immigration Judge with extensive legal management experience, the Department is well on the way to solving the problems of the immigration judge system within the existing departmental framework. For example, Chief Judge William Robie has been given authority and is now in the process of developing a new code of procedure for immigration judges. We believe that ultimate questions of interpretation of the immigration laws within the Executive Branch rests with the Attorney General, and that he should continue to review legal interpretations by the judges and the board by certification, and to review rule-

making relating to the jurisdiction and procedures followed by the judges and the board. This authority has historically been used very judiciously but has insured appropriate Executive oversight.

2. What particular administrative or legal difficulties would result from an independent Board and aren't these outweighed by the impartiality and autonomy of board decisions, particularly in asylum cases?

It is generally undesirable to have entities within the Department of Justice which are not ultimately responsible to the Attorney General. We believe that the Board and the immigration judges do exercise fully independent judgment in individual cases under the current procedures. However, there may be some instances where it is necessary for the Attorney General to exercise his right of participation where overall interpretation of the immigration law is involved. It is necessary for the Government to speak with a single voice on these issues.

3. What is the Department's view on the size of the Board (the bill calls for a six-member Board)?

The Department of Justice believes that the U.S. Immigration Board should be composed of nine members, who could sit in panels of three. This would be necessary, to facilitate fair and prompt disposition of the current jurisdiction of the Board of Immigration Appeals and the expanded workload that can be anticipated from employer sanctions and asylum cases.



4. What is the Department's position on the number of administrative law judges that would be required to carry out their responsibilities under the bill (which limits the number of judges to 70)?

The Department opposes any statutory limit, which would preclude the flexibility needed for emergencies and future growth in workload. Already the caseload for the administrative law judges specified by this bill is well above the capacity of 70 judges. With the review of employer sanctions and asylum determinations added to their current jurisdiction, the 20 judges which this bill would add to the existing force of 50 would be needed just to handle the asylum caseload.

#### EMPLOYMENT DISCRIMINATION

1. Would you respond to the criticism that this bill will result in employment discrimination against ethnic and minority groups?

As Attorney General, I take very seriously my responsibility to eliminate employment discrimination and speak out against any proposal which would have the effect of limiting employment opportunities on the basis of race, color, national origin, sex, or age. We reviewed the employer sanctions provisions in this legislation and found unequivocally that employers would not be able to defend a Title VII employment discrimination action on the ground that the challenged

practice was necessary to avoid violating the employer sanctions provisions of the Immigration and Nationality Act (as amended by this bill). We would also note that the authors of the legislation were careful to insure that employers are not entitled to selectively enforce the documentation requirements.

Additionally, we believe the potential is great for lessening employment discrimination because of employer sanctions. As we all know, some employers discriminate against U.S. citizens and permanent residents by knowingly referring and hiring illegal aliens. Discrimination exists in a more subtle form when some employers now impose more substantial identification or documentation requirements on foreign-appearing applicants than they do on other job seekers. This they will no longer be permitted to do.

Therefore, both because of the careful wording of the proposed statute and because of the substitution of a uniform system of employment eligibility verification for present practices, I am confident there will not be an increase in employment discrimination.

2. What is the Department's view on the various anti-discrimination provisions contained in H.R. 1510 (i.e., requirement that Civil Rights Commission issue reports, Labor/Justice Task Force to review discrimination complaints?)

It is notable that the legislation contains numerous provisions requiring close monitoring of the implementation of employer sanctions. Specifically, the President is required to consult semi-annually with the Congress on this issue, the Civil Rights Commission is required to submit three reports to the Judiciary Committees (18, 36, and 54 months after enactment) on this matter, and the Attorney General, the Chairman of the EEOC and the Secretary of Labor are to establish a task force to monitor and review allegations of employment discrimination. Clearly some combination of these monitoring devices is appropriate.



THE SECRETARY OF HEALTH AND HUMAN SERVICES  
WASHINGTON D.C. 20201

The Honorable Romano L. Mazzoli  
Chairman, Subcommittee on Immigration,  
Refugees, and International Law  
Committee on the Judiciary  
United States House of Representatives  
Washington, D.C. 20515

Dear Mr. Mazzoli:

Secretary Heckler has asked me to respond to your letter of March 11, 1983 which contained a series of follow-up questions pertaining to Deputy Assistant Secretary Anthony J. Pellechio's March 9 testimony before your Subcommittee on H.R. 1510, the Immigration Reform and Control Act of 1983. Answers to each of your questions are attached.

I wish to take this opportunity to comment upon the Subcommittee's proposal to provide newly legalized aliens with a limited program of Federally-supported medical insurance. As envisioned in H.R. 1510, this program would consist of a reduced benefit package and limited eligibility based upon severity of condition and public health interest.

The Administration agrees, in principle, that limited medical support would be appropriate. We also believe, however, that decisions regarding exact services to be covered, persons to be considered eligible, the reimbursement relationship between the service provider and the payor, and the balancing of financing between medical care and other essential services can best be made by the individual States. For this reason, we continue to believe that a block grant would provide the most flexible and responsive approach.

Any attempt to incorporate into the Medicaid program a wholly distinct time-limited program embodying different eligibility, services, administrative procedures and financing would be disruptive, expensive and difficult to target.



The Medicaid program uses broad definitions of covered services (e.g., inpatient hospital services, physician services) and does not define coverage by medical conditions (e.g., fractured skull, lung cancer) or in terms of specified emergency services. Within this program, it would not be possible to define care required "in the interest of public health or because of serious illness or injury" as the bill provides. In addition to definitional problems, the development and application of new claims review procedures (to screen out care that is neither urgent nor in the public health interest) would be time-consuming, expensive, and prone to considerable error.

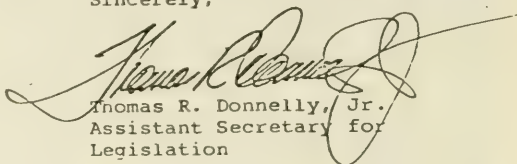
- Additional modification to the Medicaid system would be necessary due to different Federal financial participation, different service package and different claims processing procedures to support the population covered in this bill. Dual identification cards would be needed to distinguish those persons eligible for partial Medicaid benefits from fully entitled recipients. Such a system would confuse providers and impede our efforts to improve provider participation in the Medicaid program.
- Medicaid eligibility derives from eligibility for AFDC and SSI. If Federal criteria were to make all legalized aliens eligible for medical assistance benefits, including single persons and childless couples, it would raise serious equity questions with respect to low-income persons in the total population who are excluded from Medicaid.
- Full Federal financing provides no incentive for States to control costs. The unknown numbers of illegal aliens, rates at which they may register for legalization, and health status make cost impacts uncertain.

The problems outlined above also apply in setting up a separate program of medical assistance outside the Medicaid system. States, on the other hand, already have multiple systems other than Medicaid for delivering health benefits; these include HMOs, State-only insurance programs, and GA medical assistance. The block grant would enable each State to use whatever system best would fit the medical assistance systems and the needs of the legalized aliens present in that State. We have strong objections to any language in H.R. 1510 that would require this Department to impose limited medical assistance within the context of the Medicaid system or would require us to establish a new Federal medical assistance program for legalized aliens.

As Deputy Assistant Secretary Pellechio stated when he testified before your subcommittee, the Administration is very concerned about the potential costs of H.R. 1510. We have estimated these costs to be nearly \$4 billion for public assistance for fiscal years 1984 through 1987, of which nearly \$1.5 billion would be for medical assistance.

Finally, I regret that staff were not able to deliver copies of the testimony of March 9 to the Subcommittee prior to the hearings. As you know, immigration policy is complex, particularly in light of the need for detailed cost estimates and coordination with the Departments of Justice, State, Agriculture and Labor, among others. I assure you that this testimony was handled on an expedited basis. We look forward to continuing to work closely with you on this important legislation.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas R. Donnelly, Jr.", with a large, sweeping flourish extending to the right.

Thomas R. Donnelly, Jr.  
Assistant Secretary for  
Legislation

Question #1: To what extent are undocumented aliens today receiving social welfare benefits? Please name and describe all studies of which you are aware that show that illegal aliens "pay in" more than they receive. Please name and describe all studies that show the opposite.

Answer: There are no definitive estimates of the rates at which illegal aliens participate in social welfare and other income transfer programs. Based on several studies that we reviewed, estimates of participation range from 3.9% to 49% for Unemployment Insurance and from 0.5% to 4.2% for welfare benefits. The rates for specific programs such as AFDC, food stamps and Medicaid reflect similar ranges and uncertainty. As a result of the lack of hard information, none of the researchers whose studies we reviewed supports the conclusion that illegal aliens "pay in" more than they receive without considerable reservations about the lack of verifiable data on this subject. Moreover, the more recent studies suggest that the reverse is true and that illegal aliens do, in fact, receive more than they pay in.

Listed on the next page are the relevant studies concerning this issue. We have not divided the research into groupings based on conclusions about the "pay in" issue, since the authors rarely take a definitive stand on this subject. A short abstract of each work has been added to its bibliographic reference.

Question #2: In the past year, how many cases involving fraudulent procurement of HHS funded benefits has HHS discovered? What proportion of those cases resulted in criminal convictions? What percentage of those convictions involved undocumented aliens?

Answer: During 1982, we opened 10,937 new cases involving suspected fraud in connection with HHS funded benefits. Convictions for fraud in HHS benefits, including pre-trial diversions, totalled 543. These convictions include cases opened in prior years, because several months sometimes elapse between the time a case is opened and actual trial and conviction. About 7.8 percent of our convictions involve illegal aliens.

These figures do not include the convictions or deportations of illegal aliens achieved by the Immigration and Naturalization Service.



Question #3: Are HHS social services block grant programs based on the number of residents in a State or on the number of lawful residents of a State? If social service dollars are based on census figures -- and therefore include illegal aliens -- aren't the States now receiving a windfall in that they are being given money that cannot and is not spent for the benefit of illegal aliens?

Answer: Congress appropriates a fixed amount for each of the 7 HHS block grants. Funds for 6 of these are distributed to the States on the basis of the historical share they received under the predecessor categorical programs. Under the remaining block grant, Social Services, the Congress decided that a State's allocation would be based on the ratio of that State's population to the population of all the States using the most recent Census data. The Congress determined, and the Department agrees, that this is an equitable method for allotting these funds. It would be impossible for the Department of Commerce to disaggregate the Census data to exclude illegal aliens from the population figures for a particular State. Under the block grants, States have the flexibility to determine the recipients of these funds. Whether or not a State spends money to assist illegal aliens depends upon the laws of that State.

Question #4: In 1976 Marion Houston and David North prepared a report for the Department of Labor. North and Houston found that only 1/2 percent of illegal aliens received welfare, only 1.3 percent received food stamps, and 3.9 percent received unemployment compensation. Reviewing this data, Professor Gary Goodpaster of the University of California concluded that it appears, in general, "that illegals as a class pay far more in taxes than they take out in social benefit payments. . ." Do you reject those findings, and if so, what better data do you have?

Answer: It is not a matter of rejecting the 1976 North/Houston research as it is a matter of making certain that the findings are interpreted as the authors had intended. The authors believe that their 1976 study has been misinterpreted because their findings were not meant to represent all illegal aliens. Furthermore, in more recent writings, the authors acknowledge that some recent studies have reported higher rates of consumption of income transfer programs.

In the preface to their 1976 study, North and Houston said: "The sampling strategy used in the survey, while resulting in selection of a diverse collection of case histories of apprehended illegals with work experience in the U.S., was not designed to produce a representative sample of either the population of illegal aliens in the U.S. labor market, or of the population of apprehended illegals in that market." (North/Houston, 1976, Preface pp. i)

In his 1981 study, "The Impact of Legal, Illegal and Refugee Migrations on U.S. Social Service Programs", North, referring to the 1976 North/Houston study, said: "We remarked at the time that the low use of income transfer programs could be expected from a population of young, healthy male workers separated from their families. While our data was frequently quoted, our cautionary statements were largely ignored. Meanwhile, other scholars asked other groups of illegal immigrants similar questions, usually reporting roughly similar findings. Van Arsdol's survey of illegal immigrants in Los Angeles (who had contacts with an immigrant-serving agency) produced quite different data, however. This group had been in the

U.S. longer than the North-Houstoun study group, and included a much larger proportion of women. The men in the group reported an 8.9% participation rate in welfare programs while 18.5% of the women reported receipt of welfare payments." (North, 1981, pp. 18-19)

Another research effort, conducted in 1981 by the U.S. Department of Labor, the California State Employment Development Department, and David S. North, and based on a group of 208 apprehended illegal aliens (who had Social Security numbers) showed higher use of Unemployment Insurance benefits. Of the group, 77% worked in positions covered by State unemployment insurance. Of these, 49% had filed for UI benefits and 35% had actually received benefits. (North, David S. "The Impact of Legal, Illegal and Refugee Migrations on U.S. Social Service Programs." (Revision of a paper prepared for: Workshop on Immigration and Refugee Issues. New TransCentury Foundation, Washington D.C., August 1981. pp.17-24.)

A preliminary report by the General Accounting Office suggests that for Social Security benefits illegal aliens take out far more than they pay in. The study reports that for illegal aliens, the ratio of benefit receipt to contributions is 23 to 1. The ratio for the total U.S. population is 5 to 1. (Exhibit 1- Draft of a proposed report by GAO - Should Social Security Benefits be Paid to Aliens Abroad and Aliens Who Worked Illegally While in the United States? Congressional Record. March 18, 1983 pp.S3359)

Question #5: Last year HHS prepared a cost estimate in which it "assumed" that "the undocumented have the same ratio of blind and disabled as the U.S. population." Given the fact that in the mid-seventies HHS officials in New York found that only 1/3 of a percent of supplemental security payments went to undocumented aliens and that HHS "assumed" that aliens comprise 2.5 percent of the population, how can HHS justify its assumption that undocumented aliens will use SSI at the same rate as the general population?

Answer:

By law, illegal aliens are precluded from participation in the SSI program. Local Social Security offices handling SSI claims require documentation showing U.S. citizenship, permanent resident status, or refugee status. We would expect the proportion of aged, blind or disabled illegal aliens receiving SSI to be much lower than the proportion of aged, blind or disabled persons in the total population receiving SSI.

The Department's cost estimates are based on assumptions about use of SSI after aliens are granted amnesty and legalized. Under H.R. 1510, legalized aliens who are aged, blind, or disabled and who meet the income requirements of SSI would become eligible for these benefits. We anticipate that once aliens are legalized, and no longer excluded by law from the SSI program, their dependency on SSI would begin to increase.

Two factors affect the proportion of people in a population who will go on SSI: the proportion that are aged, blind and disabled, and the proportion of these that are in low-income brackets. We have assumed that compared to the total population, a lower proportion of legalized aliens will be aged, blind or disabled. Of those who are, however, a greater proportion will be poor. On balance we have assumed that a lower proportion of legalized aliens will be eligible for SSI than in the total U.S. population. Currently, 1.8% of the total U.S. population receives SSI. We assume that following a 3-year phase-in after legalization takes place, the rate of SSI reciprocity among legalized aliens will level out to 1.6% of that population.



Question #6: Please list the full set of assumptions upon which your cost estimates were based.

Answer: A copy already has been submitted as part of the corrected transcript of Anthony J. Pellechio's remarks before your Subcommittee, March 9. For your convenience, another copy of the cost assumptions is attached.

ASSUMPTIONS FOR ADMINISTRATION ESTIMATES OF  
WELFARE COSTS UNDER S.529 and H.R. 1510

A. THE LEGALIZATION PROGRAM

- (1) The Administration's estimates assume that there are now about 6.25 million illegal aliens in the United States. This was derived as follows: A 1980 Census staff study estimated that there were 3.5 million illegal aliens in 1978. Starting with a midpoint figure, we updated the estimate for subsequent growth of this population. We estimate that this population has grown since 1978 on the order of 250,000 per year. This growth, added to the 1978 estimate, raises the total illegal alien population to about 6.25 million in 1984.
- (2) The INS staff developed estimates for the Select Commission on Immigration and Refugee Policy of the length of continuous United States residence of the illegal alien population based upon several small sample illegal alien studies done in the late 1970s. INS's estimates were that 30 percent of all illegal aliens have been in this country continuously for four years or more. Using these estimates, we would conclude that if legalization occurs in early 1984 with a legalization cut-off date of 1/1/80, only 30 percent of the 6.25 million illegal aliens would be eligible. We have adjusted INS's original estimates upward and assumed that if legalization occurs in early 1984 with a legalization cut-off date of 1/1/80, 38 percent of the illegal aliens would be eligible (See Table 1). The Department assumes that the INS estimates were made a few years ago and that since then the prospect of U.S. amnesty and worldwide recession are likely to have led higher percentages of illegal aliens to choose to remain continuously in this country.
- (3) More specifically, we estimate that 5% of the illegal aliens entered before 1/1/73 and would be eligible for registrant status under H.R. 1510, 8% entered between 1/1/73 and 1/1/77 and would be eligible for permanent status while 25 % entered between 1/1/77 and 1/1/80 and would be eligible for temporary status (see Table 1).

This is a conservative estimate. It assumes that the great majority of illegal aliens have been in this country less than four years. If, in fact, a greater proportion have documents to establish continuous residency for four or more years, more legalized aliens will be eligible for legalization.

Table 1

Estimated Length of Continuous Residency  
of the Illegal Alien Population\*

<u>Year of Entry</u>	<u>Percent of Total Illegal Population</u>	<u>Maximum Eligible out of 6.25 Million</u>
1982	85	5.313
1981	70	4.375
1980	53	3.313
1979	38	2.375 (TRs)
1978	25	1.563
1977	18	1.125
1976	13	.813 (PRs)
1975	9	.563
1974	7	.438
1973	6	.375
1972	5	.313 (Registry under H.R. 1510)

- \* Table revised upward from estimates originally prepared by INS for the Select Commission on Immigration and Refugee Policy. The earlier INS estimates were developed based on small sample surveys of the illegal alien population. Since then, the prospect of U.S. amnesty and world-wide recession are likely to have caused higher percentages of recently arriving aliens to remain continuously in the United States.

Derivation of Legalized Alien Population Totals

	<u>% of 6.25 Million Illegal Aliens Eligible</u>	<u>Estimated Number</u>	<u>% Participating in Legalization</u>	<u>Estimated Number</u>	<u>% Additional U.S. Born Children</u>	<u>Total Legalized Alien Population With All Their Children</u>
Early PRs entered before 1/1/73 (registrants under H.R. 1510)	5%	312,500	80%	250,000	+13%	282,500
PRs entered between 1/1/73 and 1/1/77	8%	500,000	75%	375,000	+13%	423,700
TRS entered between 1/1/77 and 1/1/80	25%	1,562,500	66.67%	1,041,700	+13%	1,177,000
Total	38%	2,375,000	70.18%	1,666,700	+13%	1,883,200



- (4) INS staff estimate that 3/4 of the aliens eligible for permanent status and 2/3 of the aliens eligible for temporary status will participate. Our cost estimates use these same rates except that we have estimated that the earliest cohort -- those who have resided continuously in this country since 1/1/73 (the registry population under H.R. 1510) would participate in legalization at 80 percent. These participation rates are higher than the participation rates reported by other countries recently granting amnesty to aliens because we anticipate that broadly based ethnic community groups will be able to promote and assist with legalization effectively. Furthermore, unlike other countries, this legalization program will be accompanied by a new enforcement effort -- the employer sanctions program.

#### B. DEMOGRAPHIC CHARACTERISTICS

- (1) Age and family composition -- A recent Census staff study of characteristics of illegal aliens estimated that about 27 percent of that population are children 18 and under. This data did not include additional children born in the United States to illegal alien parents. We assume that the U.S. born children add 13 percent to the total population. This assumes that for every two foreign-born illegal children, there is one additional child born in the U.S. The estimate assumes that the American-born children, who are legal U.S. citizens, are not getting the welfare benefits to which they are entitled because the parents who are illegal do not want to come forward. The estimates also assume that these legal children are not counted in total illegal alien population figures.
- (2) Based upon small sample surveys of illegal aliens, we have assumed that on the average an illegal alien family has two children. In our estimates we assume that half of the families have female heads and the rest are two-parent families.

#### C. ASSUMPTIONS FOR WELFARE USE

- (1) Based on studies of illegal aliens, we assume that generally they are a younger population than the U.S. population. Many are employed in marginal occupations and incomes tend to be low.

- (2) Illegal aliens currently are ineligible for Federal welfare programs and rates of unauthorized welfare use reportedly are low. The Administration assumes that most illegal aliens are employed now, but anticipates that after legalization, some aliens who are employed now, particularly in marginal level jobs, will not be able to retain their jobs. As the aliens become eligible for public assistance programs, the rate at which they participate initially will be lower than the total U.S. population and, after three years, the rates will build up to a comparable level. We have assumed that as the population assimilates, it will behave more like the total U.S. population as far as welfare use is concerned, leading to similar rates of dependency controlling for age and income characteristics. The specifics are discussed in the sections on each program below.
- (3) If the bill becomes law late in 1983, we assume that six months of FY 1984 benefits will be available to those who are legalized. The three and six year durations of program eligibility mentioned above also assume mid-year starting and end points.
- (4) Average per capita benefit levels in each program for FY 1984 and the rate of growth in the outyears conform with the Administration's new budget policies. These are shown on the projected cost tables for each program.

#### D. ASSUMPTIONS FOR AFDC

- (1) We estimate that under H.R. 1510, the cost of AFDC benefits for legalized aliens in FY 1984, FY 1985, FY 1986 and FY 1987 will be \$20.75 million, \$43.56 million, \$47.79 million, and \$83.78 million respectively (see Table 3.) Under S. 529, the total AFDC costs over these same years will be \$0, \$0, \$0, and \$31.69 million (see Table 4).
- (2) Under both H.R. 1510 and S. 529, permanent residents would be excluded for three years and temporary residents would be excluded for six years from AFDC. By 1987, those who became permanent residents when they were granted amnesty would be eligible for AFDC benefits. By 1989, those who became temporary residents when they were granted amnesty would be eligible for these benefits.

TABLE 3

House Bill H.R. 1510  
Projected AFDC Costs

Permanents = 95,000   Registrants = 63,000   Temporaries = 263,000

Individual Cost by Year

1984	1985	1986	1987	1988	1989	1990
\$ 750	\$ 760	\$ 780	\$ 800	\$ 820	\$ 840	\$ 860

Costs (Millions)

Permanents	0.00	0.00	0.00	33.21	70.50	77.21	81.56
Registrants	20.75	43.56	47.97	50.58	51.84	53.11	54.37
Temporaries	0.00	0.00	0.00	0.00	0.00	0.00	118.99
TOTAL BY YEAR:	20.75	43.56	47.79	83.78	122.35	130.31	254.92

TABLE 4

Senate Bill S. 529  
Projected AFDC Costs

Permanents = 158,000

Temporaries = 263,000

Individual Cost by Year

1987	1988	1989	1990
\$ 800	\$ 820	\$ 840	\$ 860

Costs (millions):

Permanents	31.69	81.13	116.21	136.03
Temporaries	0.00	0.00	0.00	56.69
 Total by Year:	 31.69	 81.13	 116.21	 192.72



- (3) Under H.R. 1510, aliens who entered before 1/1/73 and adjust to regular permanent resident status under the registry program would be entitled to receive benefits under all regular Federal entitlement programs, including AFDC, beginning in FY 1984 if they meet the normal eligibility criteria of these programs.
- (4) The Administration's estimates are based on assumptions about the proportion of aliens in families with children and the unemployment levels of the population after legalization. We assume that 23 percent of all children will be eligible to receive AFDC. (In the total population, 13 percent of all children receive AFDC. We have assumed that once the legalized population reaches their full level of participation, the dependency rate will be higher because of the lower socioeconomic status of this population compared to the total population. Some 90 percent of the families receiving AFDC will be female-headed families.
- (5) We have assumed that 78 percent of the legalized alien AFDC units will be single parent units containing an average of three people and 22 percent of the AFDC assistance units will be two-parent units (in States with AFDC unemployed parents programs) and containing an average of four people.
- (6) After a phase-in period of three years, 87 percent of the population that is eligible for AFDC and 40 percent of the population that is eligible for AFDC-UP will participate in the program (equal to the current rates in the total population). Participation in AFDC is assumed to build up at annual rates which are 50 percent, 75 percent, and 100 percent of the full AFDC participation rates noted above.
- (7) Annual per individual costs are based on the projected per individual costs of the total population.

#### E. ASSUMPTIONS FOR SSI

- (1) Under H.R. 1510, the estimated cost of SSI benefits for legalized aliens will be \$23.46 million in FY 1985, \$91.96 million in FY 1986 and \$108.40 million in FY 1987 (see Table 5). Under S. 529, there will be no costs for SSI in FY 1984 through FY 1986. The cost in FY 1987 will be \$7.43 million (see Table 6).

TABLE 5

House Bill H.R. 1510  
Projected Supplemental Security Income Costs

Permanents = 6,500      Registrants = 4,500      Temporaries = 19,000

Individual Cost by Year

1984	1985	1986	1987	1988	1989	1990
\$2,230	\$2,370	\$2,500	\$2,640	\$2,780	\$2,910	\$3,040

Costs (millions):

Permanents	3.77	10.02	14.80	17.85	18.82	19.67	20.55
Registrants	2.52	6.68	9.87	11.90	12.55	13.11	13.70
Temporaries	12.58	33.40	49.34	59.49	62.74	65.56	68.51
Total by Year	18.88	50.10	74.00	89.24	94.11	98.34	102.77

Federally Reimbursed State Supplement

Costs (millions):

Permanents	1.06	2.81	4.14	2.50	0.00	0.00	0.00
Temporaries	3.52	9.35	13.81	16.66	17.57	18.36	9.59
Total by Year:	4.52	12.16	17.96	19.16	17.57	18.36	9.59
<u>GRAND TOTAL</u> <u>BY YEAR:</u>	23.46	62.26	91.96	108.40	111.68	116.68	112.36

TABLE 6

Senate Bill S. 529  
Projected SSI Costs

Permanents = 11,000

Temporaries = 19,000

Individual Costs by Year

<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
\$2,640	\$2,780	\$2,910	\$3,040

Costs (millions):

Permanents	7.43	19.59	28.69	34.24
Temporaries	0.00	0.00	0.00	14.27
TOTAL	7.43	19.59	28.69	48.52

- (2) Under H.R. 1510, permanent residents would be excluded for three years and temporary residents would be excluded for six years from Federal public assistance programs unless it is determined that they require assistance "because of age, blindness or disability." The Department believes that under this language, all aged or disabled legalized aliens who meet the eligibility requirements for SSI would be eligible for SSI beginning in FY 1984.
- (3) Under S. 529, we assume that permanent residents would become eligible for SSI beginning in FY 1987 and temporary residents who become permanent residents would become eligible for SSI beginning in FY 1990.
- (4) We assume an SSI reciprocity rate of 1.6 percent for aged and disabled combined. The rate assumes that 2.3 percent of the population is elderly and 1 percent is blind or disabled. (Since a recent Census staff study shows that illegal aliens are younger on average than the total United States population, the overall percentage of blind, disabled and elderly is smaller.) It is assumed that 75 percent in both groups will be eligible for SSI and, after a three year phase-in period, 65 percent would participate. This is the current participation rate for the total population. The phase-in rates are estimated to be 50%, 75% and 100% of the full 65% participation rate.
- (5) Under H.R. 1510, the Administration assumes that the Federal government will be responsible for reimbursing States for costs of providing SSI State supplements to legalized aliens. Whereas States normally pay these costs, in the case of legalized aliens, the Federal government is assumed to be responsible for reimbursing States for three years in the case of permanent residents and for six years in the case of temporary residents. We have assumed that the cost of State supplements will be 28 percent of the cost of the Federal SSI program -- the percentage is based on current SSI costs nationally.
- (6) The House bill's State reimbursement provision does not apply to aliens legalized under the registry program. Thus there are no registrant costs under SSI State supplements.



- (7) Under S. 529, there are no provisions for direct Federal reimbursement of State and local public assistance costs. The Federal government will be responsible only for the Federal share of SSI.
- (8) The annual per recipient costs reflect costs for aged and disabled combined and are the same as the program's currently projected per individual costs for the total U.S. population.

F. ASSUMPTIONS FOR MEDICAID

- (1) The projected costs of Medicaid for legalized aliens under H.R. 1510 is \$201.28 million in FY 1984, \$419.38 million in FY 1985, \$429.90 million in FY 1986, and \$425.77 million in FY 1987 (see Table 7). Medicaid costs under S. 529 would be \$0, \$0, \$0, and \$38.34 million (see Table 8).
- (2) Under the Senate bill, permanent residents would be excluded for three years and temporary residents who become permanent residents would be excluded for six years from Medicaid.
- (3) The House bill would exclude legalized aliens from Federal medical assistance programs for the same time periods unless such assistance is required "in the interest of public health" or because of "serious illness or injury." Under this language the precise extent of medical assistance coverage for aliens is unclear. We have assumed that aliens who a) are eligible for SSI, b) are eligible for AFDC, or c) would have been eligible for AFDC, but are excluded from such benefits by the bill, would be eligible for medical assistance under Medicaid beginning in FY 1984. We have assumed that populations normally ineligible for Medicaid, e.g., singles and childless couples, would not be eligible for medical assistance under the bill. If coverage were extended to these populations, costs would be much higher.
- (4) We assume initially rates of Medicaid use by eligible legalized aliens will be lower than in the general population. Compared to AFDC or SSI, however, we have assumed that legalized aliens will increase their use of Medicaid more rapidly to a level comparable to the general U.S. population's use of this program. This is because medical conditions will bring legalized aliens into health facilities for treatment regardless of whether or not they are

TABLE 7  
House Bill H.R. 1510  
Projected Medicaid Costs  
Federal Share

Individual Cost by Year							
	1984	1985	1986	1987	1988	1989	1990
Adult	\$ 551	\$ 560	\$ 560	\$ 570	\$ 580	\$ 580	\$ 590
Child	267	270	270	280	280	280	280
Aged/Disabled	847	860	870	870	890	890	900
PERMANENTS & REGISTRANTS Costs (millions)	Adult = 63,000    Child = 136,000    A/D = 15,000						
Adults	16.03	33.24	34.56	35.85	36.48	36.48	37.11
Children	16.75	34.69	36.34	37.98	37.98	37.98	38.52
Aged/Disabled	6.03	12.46	13.12	13.45	13.63	13.71	13.88
Total	38.80	80.38	84.01	87.27	88.09	88.16	89.50
TEMPORARIES Costs (Millions)	Adult = 105,000    Child = 227,000    A/D = 26,000						
Adults	32.06	66.48	69.12	71.70	72.96	72.96	74.21
Children	33.50	69.38	72.67	75.96	75.96	75.96	77.05
Aged/Disabled	12.05	24.91	26.24	26.89	27.26	27.41	27.75
Total	77.61	160.78	168.03	174.55	176.18	176.33	179.02
Total by Year:	116.41	241.16	252.04	261.82	264.27	264.50	268.52

Federally Reimbursed State Share

PERMANENTS Costs (Millions)							
Adults	7.64	15.85	16.48	8.55	0.00	0.00	0.00
Children	7.99	16.55	17.33	9.06	0.00	0.00	0.00
Aged/Disabled	2.87	5.94	6.26	3.21	0.00	0.00	0.00
Total	18.51	38.34	40.07	20.81	0.00	0.00	0.00
TEMPORARIES Costs (Millions)							
Adults	27.41	57.84	56.68	58.79	59.82	59.82	30.43
Children	28.64	60.36	59.59	62.29	62.29	62.29	31.59
Aged/Disabled	10.31	21.68	21.51	22.05	22.35	22.48	11.38
Total	66.36	139.88	137.79	143.13	144.47	144.59	73.40
Total by Year:	84.87	178.22	177.86	163.95	144.47	144.59	73.40
FED SHARE & FED. REIMB. STATE SHARE GRAND TOTAL	201.28	419.38	429.90	425.77	408.73	409.09	341.91

TABLE 8

Senate Bill S. 529  
Projected Medicaid Costs

	Individual Cost by Year			
	1987	1988	1989	1990
Adult	\$ 570	\$ 580	\$ 580	\$ 590
Child	280	280	280	290
Aged/Disabled	900	910	920	930
PERMANENTS      Adult = 63,000      Child = 136,000      A/D = 15,000				
<u>Costs:</u>				
Adults	16.04	34.16	35.75	36.92
Aged/Disabled	4.70	9.82	10.24	10.51
Children	17.55	35.66	37.61	39.97
Total	38.34	79.63	83.60	87.41
TEMPORARIES      Adult = 105,000      Child = 227,000      A/D = 26,000				
<u>Costs:</u>				
Adults	0.00	0.00	0.00	26.83
Aged/Disabled	0.00	0.00	0.00	8.09
Children	0.00	0.00	0.00	29.27
Total	0.00	0.00	0.00	64.18
GRAND TOTAL	38.34	79.63	83.60	151.59

covered under Medicaid. Typically, however, a determination will be made by the facility whether or not the patient is eligible for Medicaid benefits and, if the alien is eligible, he will be enrolled in the program. The phase-in rates are assumed to be 92 percent, 96 percent, and 100 percent of the participation rate (87% for AFDC families, 40% for AFDC-UP families, and 65% for SSI recipients).

- (5) The Administration has developed its estimates based upon benefit levels equal to the average annual Medicaid benefit levels of the total population excluding long-term care. Our rationale for using the full benefit level is that whereas the precise extent of medical assistance coverage is unclear under the House bill, we have assume, pending further guidance from the Committee, that hospitalization and related ancillary services, physician visits, prenatal care, immunizations, and medication all go toward conditions that are serious or in the interest of public health and thus would be reimbursed by the medical assistance program for legalized aliens. Excluding long-term care, over 90 percent of Medicaid costs currently are for services that would meet the aliens' criteria for reimbursement. Since we know little about the population's health status, but believe that it may be worse than that of the general Medicaid population, we have developed our estimates based on full Medicaid costs (excluding long-term care). If relative to the current Medicaid population, aliens are in less need of medical care, costs would be lower.
- (6) We have assumed that residents who are medically needy could receive benefits and the ratio of categorically needy to medically needy is equal to the United States average.
- (7) Based on the assumptions noted above, we estimate that at full participation, 25% of the legalized alien population would be eligible for Medicaid and medically needy programs. Nearly 10% of the total U.S. population currently is eligible for Medicaid. Because of their lower average income level, we assume there will be a higher rate of Medicaid eligibility among legalized aliens.
- (8) Under the House bill, we have assumed that for the first three years in the case of permanents and for the first six years in the case of temporaries, the Federal government also would be responsible for the State and local share of Medicaid and medically needy programs.



#### G. ASSUMPTIONS FOR FOOD STAMPS

- (1) Under the House bill, total costs for food stamps will be \$26.04 million in FY 1984, \$59.24 million in FY 1985, \$72.65 million in FY 1986, and \$118.83 million in FY 1987 (see Table 9). Under the Senate bill, there will be no food stamp costs for FY 1984 through FY 1986. The total cost in FY 1987 will be \$37.71 million (see Table 10).
- (2) We have assumed that under S. 529, permanent residents will not be eligible for food stamp benefits until FY 1987 and temporary residents who become permanent residents will not be eligible for food stamp benefits until FY 1990.
- (3) Under H.R. 1510, aged and disabled aliens will be eligible not only for SSI, but also for food stamps beginning in FY 1984. Registrants also will be eligible for food stamps beginning in FY 1984. Non-aged and disabled permanent residents will begin receiving food stamp benefits in FY 1987. At full participation, about 32 percent of the legalized aliens are expected to participate in the program. The estimates were developed using an AFDC and SSI program base, e.g., based upon the current ratio in the total U.S. population of persons on AFDC and SSI to persons on food stamps. Phase in rates and participation rates are the same as in AFDC and SSI.
- (4) The annual food stamp benefit levels are the same as the projected annual benefit levels for the total population.

#### H. ASSUMPTIONS FOR GENERAL ASSISTANCE

- (1) The estimated cost of reimbursing State and local government for GA benefits to families, single persons and couples under the House bill would be \$122.27 million in FY 1984, \$314.23 million in FY 1985, \$451.36 million in FY 1986, and \$467.27 million in FY 1987 (see Table 11).
- (2) Under H.R. 1510, the Federal government would fully reimburse State and local areas for the cost of public assistance benefits which are paid to legalized aliens if such benefits are generally available to other needy persons in the area and if those benefits receive State or local funding. Primarily, these benefits are paid through State and locally administered general assistance (GA) programs for indigent populations not eligible for AFDC or SSI.

TABLE 9

House Bill H.R. 1510  
Projected Food Stamp Costs

Non-Aged/Disabled Permanents = 143,000	Aged/Disabled Permanents = 8,000
Non-Aged/Disabled Registrants = 96,000	Aged/Disabled Registrants = 6,000
Non-Aged/Disabled Temporaries = 399,000	Aged/Disabled Temporaries = 23,000

Individual Cost by Year

	1984	1985	1986	1987	1988	1989	1990
	\$ 503	\$ 529	\$ 565	\$ 596	\$ 630	\$ 666	\$ 703
<u>NON-AGED</u>							
<u>Costs (millions)</u>							
Permanents	0.00	0.00	0.00	37.14	81.47	92.38	100.84
Registrants	20.85	45.59	52.24	57.04	60.26	63.66	67.23
Temporaries	0.00	0.00	0.00	0.00	0.00	0.00	145.92
 Total by Year	 20.85	 45.59	 52.24	 94.19	 141.73	 156.04	 313.99
 <u>AGED/DISABLED</u>							
<u>Costs (Millions)</u>							
Permanents	1.04	2.73	4.08	4.93	5.21	5.50	5.81
Registrants	0.69	1.82	2.72	3.29	3.47	3.67	3.87
Temporaries	3.46	9.10	13.61	16.43	17.36	18.33	19.36
 Total	 5.19	 13.66	 20.41	 24.64	 26.03	 27.50	 29.04
 Total by Year:	 26.04	 59.24	 72.65	 118.83	 167.77	 183.54	 343.03

TABLE 10

Senate Bill S. 529  
Projected Food Stamp Costs

Permanents = 253,000

Temporaries = 422,000

Individual Costs by Year

	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
	\$ 596	\$ 630	\$ 666	\$ 703

Costs (Millions)

Permanents	37.71	99.63	147.25	177.77
Temporaries	0.00	0.00	0.00	74.09
TOTAL	37.71	99.63	147.25	251.86

TABLE 11

House Bill H.R. 1510  
Projected General Assistance Costs  
Federal Share

Singles Type Permanents = 4,000	Singles Type Permanents = 13,000
Couples Type Permanents = 1,000	Couples Type Permanents = 3,000
AFDC Type Permanents = 73,000	AFDC Type Permanents = 244,000

Individual Cost by Year

	1984	1985	1986	1987	1988	1989	1990
Singles	\$2,634	\$2,710	\$2,780	\$2,840	\$2,910	\$2,980	\$3,050
Couples	1,980	2,030	2,080	2,130	2,180	2,240	2,290
AFDC Type	1,380	1,420	1,460	1,490	1,530	1,560	1,600
<u>SINGLES</u>							
<u>Costs (millions)</u>							
Permanents	2.51	6.45	9.27	5.42	0.00	0.00	0.00
Temporaries	8.37	21.52	30.90	36.17	37.03	37.92	19.42
Total	10.88	27.97	40.17	41.59	37.03	37.92	19.42
<u>COUPLES</u>							
<u>Costs (Millions)</u>							
Permanents	0.42	1.08	1.55	0.90	0.00	0.00	0.00
Temporaries	1.40	3.59	5.15	6.03	6.17	6.32	3.24
Total by Year:	1.81	4.66	6.70	6.93	6.17	6.32	3.24
<u>AFDC-TYPE</u>							
<u>Costs (Millions)</u>							
Permanents	25.28	64.98	93.34	54.62	0.00	0.00	0.00
Temporaries	84.29	216.62	311.15	364.13	372.87	381.82	195.49
Total	109.57	281.60	404.49	418.75	372.87	381.82	195.49
Total by Year:	122.27	314.23	451.36	467.27	416.08	426.06	218.15



- (3) There are no provisions for direct Federal reimbursement of State and local public assistance costs under the Senate bill, S. 529.
- (4) Based upon estimates of illegal alien unemployment and family composition after legalization, the Department estimates that 7 percent of aliens qualify for State and local general assistance programs for persons without children. We assumed that 22% of single individuals (the estimated current rate of unemployment among Hispanic males 17- 35 years of age) will be unemployed. Seventy-five percent of these will be living in GA benefit States and eligible for GA benefits. In order for childless couples to qualify, however, both adults would have to be unemployed. We have assumed that the joint probability that both adults would be unemployed is 4.6%. For both single and childless couples, we have assumed that full participation will be 40% and it will take 3 years to phase-in to this level.
- (5) Under the bill, mothers with dependent children and other aliens normally eligible for AFDC would be excluded from the program because of their recently legalized status. In the absence of any action by States or local areas to specifically exclude mothers with dependent children from GA benefits while GA benefits are provided to single individuals, couples without children, etc., some if not all States and localities with GA programs would provide benefits to families normally eligible for AFDC. The duration of full Federal reimbursement of GA assistance would be three years in the case of permanent residents and six years in the case of temporary residents who later become permanent residents.
- (5) The provisions for direct Federal reimbursement of State and local public assistance costs does not apply in the case of registrants. Their adjustment to regular permanent resident status is not part of this legalization program.
- (6) In estimating the costs of extending GA coverage to AFDC-type families, we have assumed that GA eligibility, participation rates, and benefit levels will be the same as for the AFDC program. This only covers non-medical benefits since we have assumed that the major medical problems of this population would be covered through Medicaid.

- (7) For single individuals, GA costs are based on the refugee program's estimates of GA cash and medical benefits combined. (The amount is similar to our latest national GA program cost data which is three years out of date.) The total cost of benefits for a two-person unit is assumed to be 1.5 times the total cost for a unit consisting of a single person.
- (8) GA benefits for families, single individuals or childless couples would only be available if there were an existing local GA program. We have assumed that a quarter of the legalized aliens reside in States or localities that have no GA programs and would receive no such benefits.

#### I. ASSUMPTIONS FOR DISABILITY INSURANCE ESTIMATES

- (1) The table below gives estimates for 1984-1990 of the average number of persons from the legalized alien group who would be receiving disability benefits under the OASDI program and projected expenditures (rounded to the nearest 5 million dollars) for disability benefits paid to these persons and their families. Disability Insurance is not a welfare program and at no time will legalized aliens be excluded from this program under either the House or Senate bill.

Table 12  
Disability Insurance Benefits for Legalized Aliens

	<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1988</u>	<u>1990</u>
Average Number of Disabled Beneficiaries	8,300	10,500	13,100	16,200	19,700	23,500	27,300
Disability Benefits Paid (in millions)	\$60	\$75	\$100	\$130	\$165	\$210	\$250

- (2) By using available information on age distribution and years of residency of the legalized aliens, we estimated the portion of each age group in the active work years (18-64) that satisfied insured status requirements. We assumed that these groups of eligible persons would experience disability

at the same rate as the normal U.S. population (based upon the 1979 OASDI Trustees Report data for the U.S. male population). We also assumed that those persons who were eligible for OASDI benefits and became disabled prior to 1/1/84 would be counted as part of the 1/1/84 disabled population, and we assumed that three percent of those disabled at the beginning of a year would die by the end of that year. Finally, we assumed that the average family benefit was \$7000 per year in 1984 -- which is comparable to the current average family benefit for the general population -- and thereafter would increase by 5 percent a year.

#### J. ASSUMPTIONS FOR THE BLOCK GRANT

- (1) Under S. 529, States will receive block grant funds to provide a program of limited assistance for legalized aliens not eligible for regular welfare programs to meet essential medical and subsistence needs. The Administration has established a ceiling of \$1.1 billion for this block grant over the four year period of FY 1984 to FY 1987. We have assumed that the \$1.1 billion in block grant funds will be divided by year based on the estimated number of legalized aliens who are excluded from regular Federal income security and health programs under the bill.
- (2) Under the bill, block grant funds for legalized aliens are authorized through FY 1990. We assume that the payouts for FY 1988 through FY 1990 will be at the same rates as in the earlier years.

TABLE 13

#### Block Grant Allocations by Year (millions of dollars)

<u>1984</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
165	330	330	275	220	220	110

#### K. SUMMARY

- (1) Chart A and B summarize the Administration's assumptions about the duration of program eligibility under H.R. 1510 and S. 529. While no legalized aliens are eligible for AFDC, Medicaid, SSI or food stamps until FY 1987 under the Senate bill, portions of the legalized alien population start being eligible for these programs beginning in FY 1984 under the House bill.





CHART B

# PROGRAM ELIGIBILITY UNDER S. 529

	1984	1985	1986	1987	1988	1989	1990
AFDC				Permanent Residents			TRs
Medicaid				Permanent Residents			TRs
SSI				Permanent Residents			TRs
Food Stamps				Permanent Residents			TRs
Disability Insurance		Permanent Residents Temporary Residents					
Block Grant		Permanent Residents Temporary Residents					

Federal  
Benefits

- (2) Under the Senate bill permanent aliens are just beginning to become eligible for these programs in FY 1987 and participation rates will be lower than in the total population. Under the House bill, since portions of the legalized alien population will already have participated in the welfare programs for 3 years, their rates of participation will be comparable to the rates of the total U.S. population.
- (3) We have assumed that the House bill's provisions for 100% reimbursement of State and local public assistance programs require not only Federal reimbursement of GA benefits, but also Federal reimbursement of the States' share of Medicaid and SSI State supplements.
- (4) We project that the total cost of benefits for legalized aliens between FY 1984 and FY 1987 will be \$3.955 billion under H.R. 1510 and \$1.580 billion under S. 529 (see Tables 14 and 15).

TABLE 14

PROJECTED FEDERAL COSTS UNDER H.R. 1510  
THE HOUSE IMMIGRATION REFORM BILL

	1984	1985	1986	1987	1988	1989	1990
AFDC	20.75	43.56	47.79	83.78	122.35	130.31	254.92
FOOD STAMPS	26.04	59.24	72.65	118.83	167.77	183.54	343.03
MEDICAID	201.28	419.38	429.90	425.77	408.73	409.09	341.91
GENERAL ASSISTANCE	122.27	314.23	451.36	467.27	416.08	426.06	218.15
SSI	23.46	62.26	91.96	108.40	111.68	116.70	112.36
DISABILITY							
INSURANCE	60.00	75.00	100.00	130.00	165.00	210.00	250.00
TOTAL	453.80	973.68	1193.67	1334.05	1391.60	1475.71	1520.37
					84-87	88-90	
					3955	4388	

TABLE 15

PROJECTED FEDERAL COSTS UNDER S.529  
THE SENATE IMMIGRATION REFORM BILL

	1984	1985	1986	1987	1988	1989	1990	
BLOCK GRANTS	165.00	330.00	330.00	275.00	220.00	220.00	110.00	
AFDC				31.69	81.13	116.21	192.72	
FOOD STAMPS				37.71	99.63	147.25	251.86	
SSI				7.43	19.59	28.69	48.52	
MEDICAID				38.34	79.63	83.60	151.59	
DISABILITY INSURANCE	60.00	75.00	100.00	130.00	165.00	210.00	250.00	FY84-FY87 FY88-FY90
TOTAL	225.00	405.00	430.00	520.17	664.98	805.74	1004.68	1580.17 2475.40



Question #7: As a matter of constitutional law, do you see any problem with that portion of H.R. 1510 which authorizes States to prohibit newly legalized aliens from receiving financial or medical benefits under State programs?

Answer: We understand that Attorney General Smith is responding to this question of constitutional and immigration law, and we, of course, defer to his views on the matter.

Question #8: H.R. 1510 makes newly legalized aliens ineligible for "any program of financial assistance under Federal law." Is that wording sufficiently precise? Do you see any ambiguities in it?

Answer: We believe the language of the proposed section 245A(d)(1)(A)(i), as would be added by section 301(a) of H.R. 1510, is sufficiently precise to permit Federal administration. Paragraph (1)(A)(i) precludes eligibility under "any program of financial assistance furnished under Federal law . . . on the basis of financial need." Also, clauses (ii) and (iii) foreclose eligibility for medical assistance under title XIX of the Social Security Act, and for food stamps, respectively. Therefore, the reference that you cite would be read to refer to programs, such as AFDC and SSI, which provide cash assistance and for which financial need is an eligibility criterion. We see no need for additional refinement of that established concept.

Disability Insurance which is provided for under title II of the Social Security Act is not a program of financial assistance based on financial need. Therefore, the reference cited does not exclude legalized aliens from the DI program.

Question #9: Please describe the program under which, for purposes of AFDC and SSI eligibility, a sponsor's resources are "imputed" to the alien immigrant he sponsors. How effective has that program been? How often is it used?

Answer: Sections 415 and 1621 of the Social Security Act require attribution of sponsor's income and resources to new immigrants in the AFDC and SSI programs, respectively. In both programs, the sponsor of a resident alien is liable for the alien's support for a period of 3 years after entry. The income and resources of a sponsor and his spouse, except for specific amounts allowed to meet their own needs and those of any dependents, are considered to be the income and resources of the alien.

All applicants for AFDC and SSI are asked their citizenship status, and the length of time they have been in the country. If they are immigrants who were admitted to the United States less than 3 years ago, the sponsors' income and resources are always taken into account in making eligibility determinations.

The provision in SSI was enacted into law in 1980. Prior to that, 6.6 percent of the new SSI claims filed each year were by aliens who had been in the United States less than 5 years. An SSA study of the impact of the provision (copy attached) concluded that it was extremely effective in reducing SSI awards to recent aliens and that it resulted in an estimated \$37,000,000 less being paid out yearly. Prior to the enactment of the provision, about 1,300 recent aliens became entitled to SSI benefits monthly. Three months after the provision went into effect, new awards to recent aliens dropped to 143 monthly. Of those awards which were made within the 3 months after the provision went into effect, most, the study determined, were incorrect and should not have been made.

No similar study has been done of the impact of the sponsor provision in the AFDC program. SSA estimated that in FY 1982, the sponsor provision would result in a savings of \$15,000,000 for the AFDC program.



## DEPARTMENT OF HEALTH &amp; HUMAN SERVICES

Social Security Administration

12187-7-9080

Refer to SLQ-47

## Memorandum

Date **JUL 8 1980** QA-4-5-11

From Beverly A. Bedwell  
Associate Commissioner  
for Assessment

Subject Special Study of Impact of Sponsor-to-Alien Deeming Provisions—ACTION

To Mr. Sandy Crank  
Associate Commissioner  
for Operational Policy and Procedure

In response to widespread public perception of misuse of the SSI law by recent aliens, Congress enacted Public Law 96-265, Section 504 effective October 1, 1980. This law requires the deeming of sponsors' income and resources to aliens for a 3-year period after their admission for permanent residence. The new law follows a recommendation of a March 1980 Office of Assessment report on aliens who received SSI benefits while owning overseas assets. The executive summary attached gives the highlights of a study of the impact of the 1980 Amendments on recent aliens who file for Supplemental Security Income (SSI) shortly after arrival.

Study findings show the new provisions resulted in the agency paying out an estimated \$37,000,000 less on an annualized basis. However, at least for the first 3 months after sponsor-to-alien deeming became applicable, district office/branch office recognition/development was very poor, and additional problems still remain.

Recommendations to improve adjudicative quality are capsuled in the executive summary, and more fully explored in the body of the report, which is attached. The members of my staff would be most pleased to work along with your staff in discussion of implementation of recommendations, or the course of further study. For further discussion, your staff may contact Wayne Adams on extension 40409.

*Beverly A. Bedwell*  
Beverly A. Bedwell

Attachment



Special Study of Effects of  
Sponsor-to-Alien Deeming Provisions

Executive Summary

—The 1980 Amendments were extremely effective in reducing SSI awards to recent aliens. We estimate that the enactment of the new provisions result in \$37,000,000 less being paid out yearly.

Before

—Prior to October 1, 1980, about 1,300 recent aliens were entitled to SSI benefits monthly.

After

- During the October - December 1980 study period (immediately after the new sponsor-to-alien deeming provisions went into effect) awards to such aliens dropped to 143 monthly.
- Most SSI awards (102 monthly) went to aliens excluded from the sponsor deeming provision.
- The exclusion based on onset of disability after arrival, caused many administrative/adjudicative problems. Medical evidence meeting standards for finding disability prior to arrival is rarely available.
- Out of 122 SSI awards made to recent aliens subject to sponsor deeming during the study period, 82.8 percent were incorrect (97 should have been denials, and four were overpayments).

Recommendations to be Considered

1. Permit disability examiners more latitude in using available domestic medical evidence and current diagnosis to establish a possible onset of disability prior to arrival.
- ✓ 2. Update and expand POMS field instructions covering adjudication and systems input for SSI cases filed by recent aliens.
3. Require a systems consistency edit for all SSI claims filed by recent aliens to insure that the sponsor deeming provision is not overlooked.
4. Institute a second review for all SSI claims filed by recent aliens as an additional safeguard against payment error since field personnel have limited experience with such cases.
5. Schedule all SSI claims filed by recent aliens for an early, full redetermination review after adjudication.

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